United States Court of Appeals
for the Second Circuit

APPENDIX

In The

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FRANK L,SILVERMAN,

Petitioner-Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

DOCKET NO.76-4195

FRANK L.SILVERMAN and ANNA SILVERMAN,

Petitioners-Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

B
P/S

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
OCT 28 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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CLOSED ON SURVEY

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F AD

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U.S. INDIVIDUAL INCOME TAX RETURN—1960

or Other Taxable Year Beginning Jan.1st. 1960, Ending Dec.31st. 1960

First name and initial / Last name: FRANK L.SILVERMAN
(If this is a joint return of husband and wife, use first names and middle initials of both)

PLEASE PRINT OR TYPE

Home address: 316 East 8th Street
(Number and street or rural route)

New York 9,N.Y.
(City, town, or post office) (Postal zone number) (State)

Your Social Security Number: 124 20 8156
Occupation: Lawyer
Wife's Social Security Number:
Occupation:

● ATTACH CHECK OR MONEY ORDER HERE ●

Exemptions

1. Check blocks which apply. Check for wife only if all of her income is included in this return, or if she had no income.
   (a) Regular $600 exemption ☒ Yourself ☒ Wife
   (b) Additional $600 exemption if 65 or over at end of taxable year. ☐ Yourself ☐ Wife
   (c) Additional $600 exemption if blind at end of taxable year. ☐ Yourself ☐ Wife
   Enter number of exemptions checked → 2
2. List first names of your children who qualify as dependents; *give address if different from yours.* Irwin B.Silverman — Enter number of children listed → 1
3. Enter number of exemptions claimed for other persons listed at top of page 2 — 3
4. Enter the total number of exemptions claimed on lines 1, 2, and 3

● ATTACH COPY B OF FORMS W-2 HERE ●

Income

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions pp. 5-6.)

Employer's Name / Where Employed (City and State)	(a) Wages, etc.	(b) Federal Income Tax Withheld
Workmens Compensation Board,Gov.A.E.Smith State Bldirg,Albany,New York.	$ 8244.85	$ 1250.04
Enter totals here →	$ 8244.85	$ 1250.04

If the social security tax (FICA) withheld from wages exceeded $144 because you or your wife had more than one employer, see instructions, page 5.

6.	Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.)	
7.	Balance (line 5 less line 6)	$
8.	Profit (or loss) from business from separate Schedule C	(584.28)
9.	Profit (or loss) from farming from separate Schedule F	
10.	Other income (or loss) from page 3 (Dividends, Interest, Rents, Pensions, etc.)	1430.00
11.	Adjusted Gross Income (sum of lines 7, 8, 9, and 10)	$ 9090.57

● Check if unmarried "Head of Household" ☐, or "Surviving Widow or Widower" with dependent child ☐. (See Instructions pp. 7-8)

Tax due or refund

12.	TAX on income on line 11. (If line 11 is under $5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is $5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2).		$ 1323.94
13.	(a) Dividends received credit from line 5 of Schedule J	$ 57.20	
	(b) Retirement income credit from line 12 of Schedule K		57.20
14.	Balance (line 12 less line 13)		$ 1266.74
15.	Enter your self-employment tax from separate Schedule C or F		
16.	Sum of lines 14 and 15		$ 1266.74
17.	(a) Federal tax withheld (line 5, col. (b) above). Attach Forms W-2, Copy B	$ 1250.04	
	(b) Payments and credits on 1960 Declaration of Estimated Tax (See page 8 instructions) District Director's office where paid 245 W.Houston Street,NYC.		$ 1250.04
18.	If your tax (line 12 or 16) is larger than your payments (line 17), enter the BALANCE DUE here → **Pay in full with this return to "Internal Revenue Service." If less than $1.00, file return without payment.**		$ 16 70
19.	If your payments (line 17) are larger than your tax (line 12 or 16), enter the OVERPAYMENT here → **If less than $1.00, the overpayment will be refunded only upon application.**		$

If income was all from wages, omit lines 13 through 16

20. Amount of line 19 to be: (a) Credited on 1961 estimated tax $ None ; (b) Refunded $ None

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☒ No
If "Yes," did you submit an itemized accounting of expenses to your employer? ☐ Yes ☒ No
(See page 6 instructions)

County in which you live: New York

Is your wife (husband) filing a separate return for 1960? ☐ Yes ☒ No. If "yes," enter her (his) name and do not claim the exemption on this return.

Do you owe any Federal tax for years before 1960? ☐ Yes ☒ No. If "Yes," enter here the Internal Revenue District where the account is outstanding.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matter required to be reported in the return of which he has any knowledge.

Sign here
(Taxpayer's signature and date) (If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)

(Signature of preparer other than taxpayer) (Address)

BEST COPY AVAILABLE

A-2

EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN

Name	Relationship	Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have gross income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "All"	Amount furnished by OTHERS including dependent (See instructions, p. 4)
				$	$

Enter on line 3, page 1, the number of exemptions claimed above.

→ If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and one Itemizes Deductions, the Other Must Also Itemize

State to whom paid. If necessary, write more than one item on a line or attach additional sheets. Please put your name and address on any attachments.

Contributions

Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions .... $

Interest

Total interest

Taxes

Real estate taxes .... State income taxes ....

State and local sales taxes .... Other taxes (specify) ....

Total taxes

Medical and dental expense

(Submit itemized list. Do not enter any expense compensated by insurance or otherwise)

NOTE: If you or your wife are 65 years of age or over, or if you or your wife have a dependent parent 65 or over, do not use this schedule. See page 9 of the instructions for larger deduction. Others use schedule below.

1. Total cost of medicine and drugs	$
2. 1 percent of line 11, page 1	
3. Excess, if any, of line 1 over line 2	
4. Other medical and dental expenses	
5. Total of lines 3 and 4	
6. Enter 3 percent of line 11, page 1	$

7. Allowable amount (excess of line 5 over line 6; see page 10 for maximum limitation) ....

Other Deductions

(See page 10 of instructions and attach information required)

Total

TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below) .... $

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1	$ 9090.57
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized *and line 1, above, is $5,000 or more,* enter the smaller of 10 percent of line 1 or $1,000 ($500 if a married person filing a separate return)	909.06
3. Balance (line 1 less line 2)	8181.51
4. Multiply $600 by total number of exemptions claimed on line 4, page 1	1800.00
5. Taxable Income (line 3 less line 4)	6381.51
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. **Do not use Tax Table on page 16**	1323.94
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D	
8. Tax credits. If you itemized deductions, enter:	
(a) Credit for income tax payments to a foreign country or U.S. possession (Attach Form 1116) .... $	
(b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest	
(c) Total .... **Enter here** →	1323.94
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c) ...	$ 1323.94

A-3

SCHEDULE C
(Form 1040)
U. S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Compute Social Security Self-Employment Tax on Page 3)

1960

A. Business name and location FRANK L.SILVERMAN,280 Broadway,New York 7, N.Y.

B. Principal Business Activity Lawyer (Retail trade, lawyer, etc.) (Principal product or service)
(See Instructions, page 2)

C. Employer's Identification Number 12-1668857

1. Total receipts $.........., less allowances, rebates, and returns $		$ 7165.00
2. Inventory at beginning of year	$	
3. Merchandise purchased $.........., less any items withdrawn from business for personal use $		
4. Cost of labor (do not include salary paid to yourself)		
5. Material and supplies		
6. Other costs **(explain in Schedule C-2)**		
7. Total of lines 2 through 6	$	
8. Inventory at end of year		
9. Cost of goods sold (line 7 less line 8)		
10. Gross profit (line 1 less line 9)		$ 7165.00

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included on line 4 (exclude any paid to yourself)	$ 1902.00	
12. Rent on business property	1200.00	
13. Interest on business indebtedness	21.82	
14. Taxes on business and business property		
15. Losses of business property **(attach statement)**		
16. Bad debts arising from sales or services		
17. Depreciation **(explain in Schedule C-1)** Schedule Attached.	2235.08	
18. Repairs **(explain in Schedule C-2)**		
19. Depletion of mines, oil and gas wells, timber, etc. **(attach schedule)**		
20. Amortization **(attach statement)**		
21. Other business expenses **(explain in Schedule C-2)** Schedule Att.	2390.38	
22. Total of lines 11 through 21		7749.28
23. Net profit (or loss) (line 10 less line 22). Enter here; on line 24, page 3; and on line 8, page 1, Form 1040		$ (584.28)

Schedule C-1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis (Exclude land)	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year
		$	$			$
See Schedule attached C-1 Line 17 and line 21 above.						

Additional first year depreciation (attach statement)

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the highest five paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 23, above, is less than $10,000. See instructions, page 2, for definition of "expense account".

NOT LIABLE

Name	Expense account	Salaries and Wages
Owner	$	XXXXXXXXXXXXX
		$
3.		
4.		
5.		

ADDITIONAL INFORMATION

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

D. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

E. Vacations for owner or employees, or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

F. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

G. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

Schedule C-1 Line 17 of said schedule

1961	Oldsmobile purchased, September, 1960	$3600.00
"	Oldsmobile depreciated to in 1960	3300.00
1961	Oldsmobile depreciated to in 1960	$300.00
	Insurance	364.83
	Garage, etc.,	474.00
	Gas & Oil, etc.,	495.00
	Tolls	75.00
	Meter parking etc.,	175.00
	1960 N.Y. State Plates	26.25
	Miscellaneous services, gratuities, etc.,	75.00
	Depreciated Office Furniture see below	250.00 **
	Total	$2235.08

Purchased in 1960 office furniture:

One Office Sofa	$183.75
Office Desk & Chair	283.75
Four Office chairs	100.00
One office desk	154.00
One Air Conditioner	300.57
Office Typewriter	118.45
Miscellaneous Office equipment	109.48
	$1250.00
20% Depreciation of office furniture	250.00**

Schedule C-2 Line 21 of said schedule

N.Y. County Lawysers Association and postage	$135.00
Telanserphone Service	$114.00
Stationery & Printing, etc.,	235.51
New York Telephone Company	466.77
Electric Power	107.70
Paragon Process service Co.,	125.00
Extraordinary Transportation	88.00
Steno. Service	568.40
Miscellanoeus petty cash	125.00
Entertainment of clients	425.00
	$2390.38

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Form 1040—1960

IF INCOME WAS ALL FROM SALARIES AND WAGES, TEAR OFF THIS PAGE AND FILE ONLY PAGES 1 AND 2

Schedule A.—INCOME FROM DIVIDENDS (Income from Savings (Building) and Loan Associations and Credit Unions should be entered as interest in Schedule B)

1. Name of qualifying corporation declaring dividend (See instructions, page 11): (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)	Amount	
PAN AM. World Airways	$ 780	
SHELLER MFG Corp	200	
AM + Foreign Power	400	
Penn RR Company	100	
2. Total	$ 1480.	
3. Exclusion of $50 (If both husband and wife received dividends, each is entitled to exclude not more than $50 of his (her) own dividends)	50-	
4. Excess, if any, of line 2 over line 3. Enter here and on line 1, Schedule J	$ 1430	
5. Name of nonqualifying corporation declaring dividend:		
6. Enter total of lines 4 and 5		$ 1430.00

Schedule B.—INCOME FROM INTEREST (This includes interest credited to your account)

Name of payer	Amount	Name of payer	Amount
	$		$

Enter total here→

Schedule D Summary.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

1. From sale or exchange of capital assets (from separate Schedule D)
2. From sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—INCOME FROM PENSIONS AND ANNUITIES (See instructions, page 12)

Part I.—General Rule

1. Investment in contract	$	4. Amount received this year	$
2. Expected return	$	5. Amount excludable (line 4 multiplied by line 3)	
3. Percentage of income to be excluded (line 1 divided by line 2)	%	6. Taxable portion (excess of line 4 over line 5)	

Part II.—Where your employer has contributed all or part of the cost and your contribution will be recovered tax-free within three years.
If your cost was fully recovered in prior years, enter the total amount received in line 5 omitting lines 1 through 4.

1. Cost of annuity (amounts you paid)	$	4. Amount received this year	$
2. Cost received tax-free in past years			
3. Remainder of cost (line 1 less line 2)	$	5. Taxable portion (excess, if any, of line 4 over line 3)	

Schedule G.—INCOME FROM RENTS AND ROYALTIES

1. Kind and location of property (Identify whether rent or royalty)	2. Amount of rent or royalty	3. Depreciation (explain in Sch. I) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
	$	$	$	$
1. Totals	$	$	$	$

2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)

Schedule H.—OTHER INCOME OR LOSSES

1. Partnerships (name, address, and nature of income)
2. Estates or trusts (name and address)
3. Other sources (state nature)

Total income (or loss) from above sources (Enter here and on line 10, page 1) $

Schedule I.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE G

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis (Exclude land)	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year
Additional first year depreciation (Attach statement)						
Total						

Schedule J.—DIVIDENDS RECEIVED CREDIT (See instructions, page 14)

1. Amount of dividends on line 4, Schedule A	$
2. Tentative credit (4 percent of line 1)	
LIMITATION ON CREDIT	
3. Tax shown on line 12, page 1, plus amount, if any, shown on line 8(b), page 2	
4. 4 percent of taxable income	
Taxable Income Means (a) If tax is computed on page 2, the amount shown on line 5, page 2. (b) If Tax Table is used, the amount shown on line 11, page 1, less 10 percent thereof, and less the deduction for exemptions ($600 multiplied by the number of exemptions claimed on line 4, page 1).	
5. Dividends received credit. Enter here and on line 13(a), page 1, the smallest of the amounts on line 2, 3, or 4, above	$

Schedule K.—RETIREMENT INCOME CREDIT (See instructions, page 14)

This credit does not apply
1. If you received pensions or annuities of $1,200 or more from Social Security or Railroad Retirement;
2. If you are under 65 years of age and had "earned income" of $2,100 or more; OR
3. If you are 65 or over and under 72, and had "earned income" of $2,400 or more.

	A	B
If separate return, use column B only. If joint return, use column A for wife and column B for husband→	A	B
Did you receive earned income in excess of $600 in each of any 10 calendar years before the taxable year 1960? Widow or widowers see instructions, page 14	☐ Yes ☐ No	☐ Yes ☐ No
If answer above is "Yes" in either column, furnish all information below in that column.		
1. Retirement income for taxable year:		
(a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems and included in line 11, page 1, of this return	$	$
(b) For taxpayers 65 years of age or older: Enter total of pensions and annuities, interest, and dividends included in line 11, page 1, and gross rents included in column 2, Schedule G, page 3, of this return		
LIMITATION ON RETIREMENT INCOME		
2. Maximum amount of retirement income for credit computation	$ 1,200 00	$ 1,200 00
3. Deduct:		
(a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income		
(b) Earned income received in taxable year: (This line does not apply to persons 72 years of age or over)		
(1) Taxpayers under 65 years of age, enter amount in excess of $900		
(2) Taxpayers 65 or over and under 72, enter amount in excess of $1,200		
4. Total of lines 3(a) and 3(b)		
5. Balance (line 2 minus line 4)		
6. Line 5 or line 1, whichever is smaller		
7. Tentative credit (20 percent of line 6)		

8. Total tentative credit on this return (total of amounts on line 7, columns A and B)	
LIMITATION ON RETIREMENT INCOME CREDIT	
9. Amount of tax shown on line 12, page 1	
10. Less: Dividends received credits from line 5, Schedule J, above	
11. Balance (line 9 less line 10)	
12. Retirement income credit. Enter here and on line 13(b), page 1, the amount on line 8 or line 11, whichever is smaller	$

U.S. GOVERNMENT PRINTING OFFICE : o70—16—78135-1

Internal Revenue Service

U.S. INFORMATION RETURN FOR CALENDAR YEAR 1960

1960

KIND AND AMOUNT OF INCOME PAID

1. Salaries, Fees, Commissions, or Other Compensation. Do *not* include amount reported on Form W-2	2. Interest on Notes, Mortgages, Bank Deposits, Etc.	3. Rents and Royalties	4. Annuities, Pensions, and Other Fixed or Determinable Income	5. Foreign Items ($600 or more)	6. Dividends ($10 or more) (For Exceptions See Instructions)	7. Patronage Dividends, Rebates, or Refunds ($100 or more)
	($600 or more aggregate amount of above items)					
$ 1252.00	$	$	$	$	$	$

TO WHOM PAID (Print full name and home address)

Morris Schaeffer
28-09 Seagirt Boulevard
Edgemere, L.I., N.Y.

(If payee is an employee, show his social security account number, if any. If employee is a married woman, also show name of husband.)

16—76059-1

BY WHOM PAID (Name, address, and employer's identification number)

FRANK L. SILVERMAN
280 Broadway
New York 7, N.Y.

12-1668857

(OVER)

FORM 1099
U.S. Treasury Department
Internal Revenue Service

U.S. INFORMATION RETURN FOR CALENDAR YEAR 1960

1960

KIND AND AMOUNT OF INCOME PAID

1. Salaries, Fees, Commissions, or Other Compensation. Do *not* include amount reported on Form W-2	2. Interest on Notes, Mortgages, Bank Deposits, Etc.	3. Rents and Royalties	4. Annuities, Pensions, and Other Fixed or Determinable Income	5. Foreign Items ($600 or more)	6. Dividends ($10 or more) (For Exceptions See Instructions)	7. Patronage Dividends, Rebates, or Refunds ($100 or more)
	($600 or more aggregate amount of above items)					
$ 650.00	$	$	$	$	$	$

TO WHOM PAID (Print full name and home address)

Irwin B. Silverman
316 East 8th Street
New York 9, N.Y.

(If payee is an employee, show his social security account number, if any. If employee is a married woman, also show name of husband.)

16—76059-1

BY WHOM PAID (Name, address, and employer's identification number)

FRANK L. SILVERMAN
280 Broadway
New York 7, N.Y.

12-1668857

A-8

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
120 CHURCH STREET
NEW YORK, N. Y. 10007

JUN 6 1968

IN REPLY REFER TO
AU:R:90D
Tel. 264-3109

Mr. Frank L. Silverman
58-19 262nd Street
Little Neck, New York 11362

Dear Sir:

In accordance with the provisions of existing internal revenue laws relating to the matter of civil tax liability, notice is given that the determination of your income tax liability for the taxable year ended December 31, 1960 discloses a deficiency in tax of $36,843.21 and addition to the tax for fraud under Code section 6653(b) of $18,421.61, as shown in the statement attached.

This notice and any action taken by the Internal Revenue Service in connection with it have no bearing on other sanctions provided by law.

The deficiency and addition shown will be assessed for collection, as required by law, upon the expiration of ninety days from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules, a copy of which may be obtained by writing to its Clerk, Box 70, Washington, D.C., 20044.

Very truly yours,

Sheldon S. Cohen
Commissioner
By Edw J Fitzgerald Jr
Edw. J. Fitzgerald, Jr.
District Director

Enclosure:
Statement

A-9

Statement

Frank L. Silverman
58-19 262nd Street
Little Neck, New York 11362

Tax Liability for the Taxable Year Ended December 31, 1960

Income Tax

Taxable Year Ended	Deficiency	Fraud Addition Section 6653(b)
December 31, 1960	$36,843.21	$18,421.61

The above deficiency is based on the adjustments and explanations set forth in detail below.

It has been determined that all or part of the underpayment of tax required to be shown on the return for the taxable year ended December 31, 1960 is due to fraud. Consequently, the 50 per cent addition to the tax provided by Section 6653(b) of the Internal Revenue Code is asserted for that year.

It has been determined that your filing status is that of a married person filing separately.

Adjustments to Income

Taxable income disclosed by return		$ 6,381.51
Unallowable deductions and additional income:		
(a) Dividend income	$ 5,710.94	
(b) Interest income	134.96	
(c) Other income	48,113.18	
(d) Commission income	165.37	
(e) Standard deduction	409.06	
(f) Other business deductions	3,710.10	
(g) Exemptions	600.00	58,843.61
Taxable income adjusted		$65,225.12

Explanation of Adjustments

(a) - It is determined that you realized additional taxable dividend income in the amount of $5,710.94 which you did not report for Federal income tax purposes.

(b) - It is determined that you realized taxable interest income in the amount of $134.96 which you did not report for Federal income tax purposes.

(c) - It is determined that you realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers'accounts deposits as shown on Schedule A attached, the source of which were not verified or explained.

(d) - It is determined that you realized taxable commission income in the amount of $165.37 which you did not report for Federal income tax purposes.

(e) - Your standard deduction has been disallowed in the amount indicated to bring your standard deduction to the maximum allowable under section 141 of the Internal Revenue Code.

(f) - The deduction of $7,749.28 claimed for other business deductions on Schedule "C" of your return is not allowed to the extent of $3,710.10 because it has not been established that any amount in excess of $4,039.18 constitutes an ordinary and necessary business expense or was expended for the purpose designated. Therefore, your taxable income is increased in the amount of $3,710.10, (see Exhibit B attached).

(g) - Your claimed deduction for one exemption, for your wife, has been disallowed inasmuch as it has not been established by you that this person qualified as your exemption under section 151 of the Internal Revenue Code.

Computation of Tax

Taxable income as adjusted	$65,225.12
Tax on $65,225.12	$38,395.59
Less: Dividends received credit - 4% of $7,140.94	285.64
Corrected income tax liability	$38,109.95
Income tax liability disclosed by return	1,266.74
Deficiency in income tax	$36,843.21
Addition to the tax under section 6653(b)	$18,421.61

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket Number 3506-68

P E T I T I O N

The above named petitioner hereby petitions for a redetermination of the deficieny in tax and penalty set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 6, 1968, and as a basis of this proceeding alleges as follows:

1. The petitioner is an individual residing at 58-19-262nd Street, Little Neck, County of Queens, City and State of New York, and the return for the period involved was filed with the Director for the 13th Manhattan District of New York.

2. The notice of deficiency, a copy of which is attached hereto, and marked Exhibit "A" was mailed to the petitioner on or about June 6, 1968.

3. The deficiency asserted by the Commissioner of Internal Revenue are for the taxable year ending December 31, 1960, in the amount of $36,843.21, and 50% penalty thereon in the amount of $18,421.61, aggregating in all the

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sum of $55,264.82, of which approximately $55,264.82, is in dispute.

4. The determination of the tax set forth in the notice of deficiency is based upon the following errors.

(a). The Commissioner erred in determining the petitioner's net income for the year herein involved upon the expenditure and investment method, commonly termed the net worth method, rather than by audit of petitioner's books and records and in finding and determining deficiency in income tax for the Calendar year ending December 31, 1960.

(b). Should it be held herein that the Commissioner did not err in determining petitioner's net income upon the net worth method the Commissioner erred in holding and determining that petitioner realized an increase in net worth for the Calendar Year ending December 31, 1960, in the amount of $58,843.61, as set forth in the defeciency notice herein, or in any amounts giving rise to net taxable income in excess of that reported by the petitioner in his income tax return for said year.

(c). The Commissioner erred in determining that petitioner realized additional taxable dividend income in the amount of $5,710.94, which allegedly petitioner did not report for Federal income tax purposes.

(d). The Commissioner erred in determining that Petitioner realized taxable interest income in the amount of $134.96, which petitioner allegedly did not report for Federal income tax purposes.

(e). The Commissioner erred in determining that petitioner realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers' accounts deposits as shown on Schedule "A" (Schedule "A" which is alleged to be attached to the notice of deficiency was never received by the Petitioner). Petitioner never realized unreported taxable income in the amount of $48,113.18 as alleged by the Commissioner.

(f). The Commissioner erred in determining that petitioner realized taxable commission income in the amount of $165.37, for the Calendar Year ending December 31, 1960.

(g). The Commissioner erred in determining that the standard deduction permitted by Law, be disallowed and reducing the standard deduction in the sum of $409.06.

(h). The Commissioner erred in determining that the deduction of $7,749.23 claimed for other business deductions on Schedule "C" of the return filed for the Calendar Year 1960, be disallowed and allowing said deduction to the extent of $4,039.18, and the Commissioner is in error in determining that any amount in excess of $4,039.18 constitutes an ordinary and necessary business expense or was expended for the purpose expended and in determining that the taxable income be increased in the amount of $3,710.10, as per Exhibit "B" attached to the notice of deficiency.

(i). The Commissioner erred in failing, neglecting and omitting to allow the exemption for the spouse of your petitioner as permitted by Statute.

(j). Petitioner timely filed his income tax return for the Calendar year ending December 31, 1960, and the respondent's determination and assessment of deficiency in income taxes for the said taxable year is barred by the Statute of Limitations provided in Section 6501, et seq. United States Code, Title 26 Internal Revenue Code.

(k). Upon information and belief, that with notice of all of the acts of the petitioner set forth in the notice of deficiency dated June 6, 1968, the Respondent, Commissioner of Internal Revenue, refrained from sending a notice of deficiency and assessment until the 6th day of June, 1968, and has thereby been guilty of laches as should in equity bar the Commissioner of Internal Revenue from determining any deficiency for the year involved herein, e.g. 1960.

(l). The Commissioner's determination of fraud penalties in the sum of $18,421.61 pursuant to Section 6653(b) of the Internal Revenue Code is erroneous and should be dismissed as the petitioner was innocent of any fraud in the preparation and filing of his income tax return for the Taxable Year ending December 31, 1960, and the burden of proof in respect to the imposition of the 50% penalty is on the Respondent, Commissioner of Internal Revenue.

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5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) and (b). The Petitioner, a resident of New York, New York, during the calendar year 1960, was employed by the Workmens Compensation Board of the State of New York, and received wages for that year in the sum of $8244.85, which has been duly reported in the income tax return for the year 1960, and in addition thereto conducted an office for the practice of law and has reported all of the income and expenses of such office for the year 1960. The Commissioner in determining taxable income upon the net worth method has errouneously lumped all deposits, allegedly consisting of bank deposits and brokers' accounts deposits as taxable income, when in fact, such deposits were capital and not taxable income. The Petitioner's return for the year involved reported petitioner's income and that the income so reported constituted the correct taxable net income of the Petitioner. Accordingly, the respindent's determination of the petitioner's net income on the net worth method does not correctly reflect petitioner's net income for the year herein involved and the respondent's determination on said method is contrary to law. In the event it is ultimately held that the respondent did not err in determining petitioner's net income on the net worth method, the respondent's statement in the notice of deficiency herein and his determination of the deficiency asserted herein, or any deficiency is erroneous.

(c). In his notice of deficiency herein, the respondent determined that petitioner realized additional taxable dividend income in the amount of $5,710.94 which was not reported for Federal Income Tax purposes. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioner as to the nature or source of this alleged additional taxable dividend income, and the Commissioner is in error, as all dividend income for the year 1960 was reported in the return filed by the Petitioner for the year 1960.

(d). In his notice of deficiency herein, the respondent determined that petitioner realized taxable interest income in the amount of $134.96 which petitioner allegedly did not report for Federal Income Tax purpose. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioner as to the nature and source of this alleged taxable interest income, and the Commissioner is in error as all interest income was reported in the return filed by the petitioner for the year 1960.

(e). In his notice of deficiency herein, the respondent determined that petitioner realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers' accounts deposited, and the Commissioner alleges that such unreported taxable income of bank and borkers' accounts deposits are shown on

Schedule "A", allegedly attached to the notice of deficiency. (Schedule "A" which is alleged to be attached was never received by the Petitioner.). The Petitioner in these circumstances is not in a position to comment and analyze this alleged schedule. The Commissioner is in error in determining that bank deposits and brokers' accounts deposits are unreported taxable income, when in fact all of the bank deposits and brokers' accounts deposits may represent capital. All taxable income for the year 1960 was reported by Petitioner.

(f). In his notice of deficiencyherein, the respondent determined that petitioner realized taxable commission income in the amount of $165.37, in this the Commissioner is in error, as all income was reported by the petitioner for the Calendar year 1960.

(g). In his notice of deficiency herein, the respondent determined that the standard deduction has been disallowed in the amount indicated in the tax return, and has only allowed a decustion in the sum of $500.00. In the return filed by your Petitioner, the adjusted gross income was reported as $9090.57. Your Petitioner pursuant to the Internal Revenue Act deducted 10% of the adjusted gross income in the sum of $909.06. The Commissioner is in error in adding the sum of $409.06 to the taxable income in his notice of deficiency, as Petitioner is entitled under the Law to the Standard deduction of 10% of the adjusted gross income when the deductions are not itemized.

(h). In his notice of deficiency herein, the respondent determined that the deduction of $7,749.28 claimed for other business deductions on Schedule "C" of the return filed by Petitioner for the taxable year 1960, be not allowed to the extent of $3,710.10, because in the opinion of the respondent it hasnot been established that any amount in excess of $4,039.18 constitutes an ordinary and necessary business expense or was expended for the purpose designated. The respondent therefore determined to increase the taxable income in the amount of $3,710.10, as per Exhibit "B" attached to the notice of deficiency. The Commissioner is in error in determining and disallowing these business expenses, necessary for the conduct of petitioner's business in 1960. Petitioner in 1960, owned an Oldsmobile used in the conduct of his business and petitioner was entitled to the deductions which the Commissioner arbitrarily disallowed:

Depreciation on automobile -	$300.00
Insurance on automobile -	364.83
Garage, etc.,	474.00
Gas & Oil, etc.	495.00
Tolls	75.00
Meter Parking, etc.,	175.00
1960 New York State Plates	26.25
Misc. services, gratuites, etc.	75.00
Total	$1985.08

The respondent arbitrarily and in error disallowed the following items which are necessary business expenses in the conduct of petitioner's business.

Stationary & Printing -	$139.41
New York Tel. Co.	271.51
Electric Power -	107.70
Extra-ordinary Trans.	88.00
Steno. services	568.40
Misc. Petty cash	125.00
Entertainment of clients	425.00
Total	$1725.02.

The Commissioner was therefore in error in disallowing the sum of $3,710.10 from the necessary business expense of Petitioner.

(i). Your Petitioner in the year involved was married and living with his wife. The Commissioner erred in failing, neglecting and omitting to allow an exemption for the spouse of your petitioner for the Calendar year 1960.

(j). Petitioner timely filed his income tax return for the taxable year ending December 31, 1960, and the respondent's determination and assessment of deficiency in income taxes for the said year is barred by the Statute of Limitations provided in Section 6501, et seq., United States Code, Title 26, Internal Revenue Code.

(k). The respondent, Commissioner of Internal Revenue is guilty of laches. The Commissioner with notice of all of the acts of the petitioner set forth in the notice of deficiency dated June 6, 1968, refrained from sending a notice of deficiency and assessment until June 6, 1968, for deficiency of taxes allegedly due for the taxable year, 1960, all to the prejuidice of the petitioner.

(1). The burden of proof in respect of the imposition of 50% penalties being upon respondent, the petitioner makes no allegation in regard thereto, except as stated in Paragraph 4(1) herein.

WHEREFORE, Petitioner respectfully prays that this Court may hear this proceeding, that it determine that there is no deficiency herein, and to vacate, set aside and declare null and void the determination of the Commissioner of Internal Revenue dated June 6, 1968, which fixed the tax deficiency in the sum of $36,843.21 and the fraud penalty in the sum of $18,421.61, making a total deficiency in the sum of $55,264.82, and the Court grant all proper and just and equitable relief in the premises.

FRANK L. SILVERMAN

FRANK L. SILVERMAN,
Attorney for Petitioner -Pro Se
Office & P. O. Address,
258 Broadway,
New York, N. Y.

STATE OF NEW YORK,)
COUNTY OF NEW YORK)

FRANK L. SILVERMAN, being duly sworn, deposes and says: that he is the Petitioner above named, and that the foregoing Petition was read by him, and that he is familiar with the statements contained therein, and that the statements contained therein are true, except as to those matters stated to be upon information and belief, and as to those matters he believes it to be true.

FRANK L. SILVERMAN.

Subscribed and sworn to before
me, this 12th day of July, 1968

Lawrence N Fariello
LAWRENCE N. FARIELLO, Notary Public
State of N. Y. No. 03-6223550
Qualified in Bronx County
Commission Expires March 30, 1970

TAX COURT OF THE UNITED STATES

FILED
1968 NOV 29 PM 3 22
TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket No. 3506-68
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. Admits the allegations of paragraph 1 of the petition. Alleges that the petitioner's present residence is his legal residence.

2. and 3. Admits the allegations of paragraphs 2 and 3 of the petition.

4. (a) to (1), inclusive. Denies that the respondent erred as alleged in subparagraphs (a) to (1), inclusive, of paragraph 4 of the petition.

5. (a) and (b). Admits that the petitioner, a resident of New York, New York, during the calendar year 1960, was employed by the Workmens Compensation Board of the State of New York and in addition thereto conducted an office for the practice of law. Denies the remaining allegations of subparagraphs (a) and (b) of paragraph 5 of the petition.

(c) Admits that in his notice of deficiency herein, the respondent determined that petitioner realized additional taxable dividend income in the amount of $5,710.94 which was not reported for Federal Income Tax purposes. Denies the remaining allegations of subparagraph

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c of paragraph 5 of the petition.

(d). Admits that in his notice of deficiency herein, the respondent determined that petitioner realized taxable interest income in the amount of $134.96 which petitioner allegedly did not report for Federal Income Tax purpose. Denies the remaining allegations of subparagraph (d) of paragraph 5 of the petition.

(e). Admits that in his notice of deficiency herein, the respondent determined that petitioner realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers' accounts deposited. Denies the remaining allegations of subparagraph (e) of paragraph 5 of the petition.

(f). Admits that in his notice of deficiency herein, the respondent determined that petitioner realized taxable commission income in the amount of $165.37. Denies the remaining allegations of subparagraph (f) of paragraph 5 of the petition.

(g). Admits that in his notice of deficiency herein, the respondent determined that the standard deduction has been disallowed in the amount indicated in the tax return, and has only allowed a deduction in the sum of $500.00. Denies the remaining allegations of subparagraph (g) of paragraph 5 of the petition.

(h). Admits that in his notice of deficiency herein, the respondent determined that the deduction of $7,749.20 claimed for other business deductions on Schedule "C" of the return filed by Petitioner for the taxable year 1960, be not allowed to the extent of $3,710.10, because in the opinion of the respondent it has not been established that any amount in excess of $4,039.18 constitutes an ordinary and necessary business expense or was expended for the purpose designated. Denies the remaining allegations of subparagraph (h) of paragraph 5 of the petition.

(i), (j), (k) and (l). Denies the allegations of subparagraphs (i), (j), (k), and (l) of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

7. FURTHER ANSWERING the petition, and in support of the determination that a part of the underpayment of tax required to be shown on the petitioner's income tax return for the taxable year 1960 is due to fraud, the respondent alleges:

(a) During the taxable year 1960, the petitioner was an attorney engaged in the practice of law under the name of Silverman and Silverman. He was employed by the Workmens Compensation Board of the State of New York as a compensation claims referee and he was also an Insurance broker.

(b) The petitioner's principal place of business was 280 Broadway, N.Y., N.Y.

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(c). During the taxable year 1960, the petitioner derived unreported taxable income from each of the aforementioned business activities.

(d). During the taxable year 1960, the petitioner failed to maintain, or to submit for examination by the respondent, complete and adequate books of account and records of his income producing activities as required by applicable provisions of the Internal Revenue Code of 1954 and the regulations promulgated thereunder.

(e). The records maintained by or on behalf of the petitioner for the taxable year 1960 consisted of certain bank and brokerage records, and they were inadequate in that they were not complete and failed to disclose all receipts and disbursements and did not properly reflect the correct taxable income of the petitioner.

(f). Although requested to do so, the petitioner failed and refused to make all of his records which he did maintain available to agents of respondent.

(g). The respondent has determined the petitioner's correct taxable income for the taxable year 1960 primarily on the basis of the bank deposits method.

(h). The taxable income of the petitioner for the taxable year 1960 is as follows:

(1). During the taxable year 1960, petitioner maintained personal checking and savings accounts and made deposits in such accounts as follows:

Source	Merchants Bank of N.Y.		East River Savings Bank		Emigrant Savings Bank		Total
1960	Regular	Special	#3374	#37218	#1,551,318	#1,563,753	
Total Deposits	21,004.46	9,281.35	1,744.32	16,725.00	1,000.00	364.38	50,119.51
Less: Dividends	1,420.35	2,444.10					3,864.45
Notes Discounted		2,990.56					2,990.56
Stock Broker			1,744.32				1,744.32
Net Unidentified Deposits							41,520.18

Exchange for stock Coster Ltd.

check to J.P. Winston & Co Inc #17118

(2) The net amount of such deposits set forth in subparagraph 7(h)(1) above of $41,570.18 is taxable income to petitioner in the taxable year 1960.

(3) During the taxable year 1960, petitioner maintained brokerage accounts and made deposits therein as follows:

Source	Burnham & Co. #41840	J.H. Winston Co.	Banner Securities	C.B. Richards Co
otal Deposits:	14,722.53	3,000.00	2,500.00	8,206.00
Less liminations: Bank transfers	$12,695.53	3,000.00	2,500.00	3,640.00
nidentified Deposits:	$2,027.00	-0-	-0-	$1,566.00 Check ERS.BK 37258

Total Net Unidentified deposits.. 6,593.00

(4) The net amount of such deposits set forth in subparagraph 7(h)(3) above is taxable income to the petitioner in the taxable year 1960.

(5) The amount of petitioner's correct taxable income, the taxable income reported on his income tax return, and the understatement of taxable income for the taxable year 1960 are as follows:

Bank Deposits

Merchants Bank of N.Y. (Sp.)	21,004.46		Item
less: dividend	1,420.35	19,584.11	
(reg.)	9,281.35		Item
less: dividends	2,444.10		
Notes discounted	2,990.56	3,846.69	
East River Savings Bank #37218		16,725.00	
Emigrant Savings Bank			
#1,551,318		1,000.00	Return of loan
#1,563,753		364.38	pre pay of policy
Total Net Bank Deposits		41,520.18	
Brokerage Account Deposits:			
Burnham & Co. #41840	14,722.53		
Less: bank transfers	12,695.53	2,027.00	check
C.B. Richards Co.	8,206.00		
Less: bank transfers	3,640.00	4,566.00	Check
Add unallowable deductions and additional income:			
Dividend income	5,710.94 ?		
Interest income	134.96		
Commission income	165.37		
Standard deduction	409.06 ?		
Other business deductions	3,710.10		
Exemptions	600.00	10,730.43	
Taxable income Reported on Return		6,381.51	
Corrected taxable income		65,225.12	
Understatement of taxable income		58,843.61	

(i). The petitioner's correct income tax liability, the income tax liability reported on his return, and the understatement of income tax liability for the taxable year 1960 are as follows:

Correct Income tax liability	$38,109.95
Income tax liability reported on Return	1,266.74
Understatement of income tax liability	36,843.21

(j). The petitioner during the taxable year 1960 did not receive any gifts.

(k). The petitioner, during the taxable year 1960, did not receive any inheritances, legacies, or devises.

(l). The petitioner, during the taxable year 1960, did not receive any nontaxable or excludable income, receipts, cash, or other assets, other than the specific items and amounts thereof described in subparagraphs 7(i)(1) and (3) above.

(m) During the taxable year 1960, the petitioner received dividend income as follows:

Paying Corporation	
Acme Missile and Construction Corp.	7.50
American and Foriegn Power Co., Inc.	400.00
American Standard	480.00
Ashland oil and Refining Co.	207.00
Atlas Credit Corp.	2.44
Baldwin-Lima-Hamilton Corp.	720.00
Braniff Airways, Inc.	300.00
Charles Pfizer and Co., Inc.	80.00
Crucible Steel Co. of America	360.00
Detroit Steel Corporation	216.00
Federal Pacific Electric Co.	98.40
International Telephone and Telegraph	315.00
Kingston Products Corp.	100.00
National Malleable and Steel Castings Co.	350.00
Pan American World Airlines, Inc.	780.00

Pennsylvania Railroad Co.	100.00
Pittsburgh Coke and Chemical Co.	210.00
Republic Pictures Corp.	400.00
Ronson Corporation	93.60
Schenley Industries, Inc.	424.00
Sheller Manufacturing Corp.	200.00
Standard Packaging Corp.	132.00
Stix, Baer and Fuller Co.	120.00
Terminal-Hudson Electonics, Inc.	240.00
Universal Marion Corp.	675.00
Sparton Corporation	60.00
Heyden Newport Chemical Corp.	120.00

Total Dividend Received	7,190.94
Total Reported on Return	1,480.00
Unreported Dividend Income	5,710.94

(n) The unreported dividend income set forth in subparagraph 7(m), above, was taxable income to petitioner in the taxable year 1960.

(o) During the taxable year 1960, petitioner received taxable commission income as an insurance broker in the amount of $167.37 from Caire-New York Agency Corp. which he failed to report on his 1960 income tax return.

(p) During the taxable year 1960, petitioner received taxable interest income in the total amount of $134.96 which he failed to report on his 1960 income tax return from the following sources:

East River Savings Bank	# 3374	$ 42.85
	34275	6.40
	37218	60.99
	65075	.09
Emigrant Industrial Savings	1551318	18.95
	1563753	3.28
Manhattan Savings Bank	537022	.90
	103687	.66
Williamsburg Savings Bank	575670	.84
		$134.96

(q) The petitioner fraudulently, and with intent to evade tax, omitted from his income tax return for the taxable year 1960 taxable income in the amount of $54,124.45.

(r) A part of the underpayment of tax required to be shown on petitioner's return for the taxable year 1960 is due to fraud.

8. Still further answering the petition, and as a defense to the assignment of error that the statute of limitations bars the assessment and collection of the deficiency in income tax due from the petitioner for the taxable year 1960, the respondent alleges:

(a) The income tax due from the petitioner for the taxable year 1960 may be assessed, or a proceeding in Court for the collection of such tax may be begun without assessment, at any time under the provisions of section 6501(c)(1) of the Internal Revenue Code of 1954, since the petitioner filed a false or fraudulent income tax return for said year with intent to evade tax, as is more fully set forth by the facts set forth in paragraph 7 above, which facts are incorporated herein by reference and relied upon by the respondent as a defense to the statute of limitations issue.

(b) The income tax due from the petitioner for the taxable year 1960 may also be timely assessed under the provisions of section 6501(c)(4) of the Internal Revenue Code of 1954, in support of which the respondent alleges:

(1) The petitioner's income tax return was filed on or before April 15, 1961.

(2) Prior to the expiration of the time prescribed by section 6501(a) of the Internal Revenue Code of 1954 for the assessment of income tax due from the petitioner for the taxable year 1960, the petitioner and the respondent on April 13, 1964, timely executed an agreement in writing pursuant to the provisions of section 6501(c)(4) of the Internal Revenue Code of 1954 extending the period for assessment of tax due for said year to June 30, 1965. The said extended date for assessment of tax was further extended under subsequent agreements in writing duly and timely executed by said parties on April 26, 1965, [March 18, 1966, and October 26, 1966,] which subsequent agreements consecutively extended said period of limitation for assessment to June 30, 1968.

(3) The statutory notice of deficiency setting forth respondent's determination of the petitioner's income tax liability for the taxable year 1960 was timely sent to the petitioner by certified mail on June 6, 1968, which date was prior to the expiration of the period for assessment as duly and timely extended under the

consecutive agreements in writing executed by both the petitioner and the respondent.

WHEREFORE, it is prayed:

(1) That the relief sought in the petition be denied.

(2) That the deficiency in income tax for the taxable year 1960, as set forth in the statutory notice, be in all respects approved;

(3) That the additions to the tax for the taxable year 1960 under the provisions of section 6653(b) of the Internal Revenue Code of 1954, as set forth in the statutory notice, be in all respects approved; and

(4) That the Court determine that the assessment and collection of the deficiency in income tax for the taxable year 1960, as set forth in the statutory notice, are not barred by the Statute of Limitations.

(Sgd.) LESTER R. URETZ -EHH

LESTER R. URETZ,
Chief Counsel,
Internal Revenue Counsel.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
RUDOLPH J. KORBEL,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

TAX COURT OF THE UNITED STATES

FRANK L.SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.3506-68

PETITIONER'S REPLY TO THE ANSWER OF THE RESPONDENT

The Petitioner in reply to the material facts alleged in the answer of the Respondent, respectfully alleges:

1. Denies each and every allegation in Paragraph 7(a) of the answer of the Respondent, and alleges that during the taxable year 1960, petitioner was employed by the Workman's Compensation Board of the State of New York, as a Workman's Compensation Claims Referee, and in addition thereto conducted an office for the practice of law, under the name of FRANK L.SILVERMAN, and petitioner was also an insurance broker.

2. Admits the allegations contained in Paragraph7(b) of the answer of the Respondent.

3. Denies each and every allegation contained in Paragraph 7(c) of the answer of the Respondent, andalleges that during the taxable year 1960, petitioner reported all taxable income from each of his business activities.

4. Denies each and every allegation contained in Paragraph 7(d) of the answer of the Respondent, and alleges that during the taxable year,1960, the petitioner as required by the applicable provisions of the Internal

Code and of the regulations promulgated thereto maintained and submitted for examination to the proper authorities a complete and adequate books of account and records of his income for the taxable year 1960.

4. Denies each and every allegation contained in Paragraph 7(e) of the answer of the Respondent, and alleges that the books and records submitted to the proper authorities properly reflected the correct taxable income of the petitioner for the taxable year 1960.

5. Denies each and every allegation contained in Paragraph 7(f) of the answer of the Respondent, and alleges that the petitioner, Frank L. Silverman, made available to the agents of the Respondent, all of his records.

6. Denies each and every allegation contained in Paragraph 7(g) of the answer of the Respondent, and alleges that the Respondent erred in determining the petitioner's correct taxable income for the taxable year 1960, primarily on the basis of the bank deposit method, rather than by audit of petitioner's books and records.

7(a). Denies each and every allegation in Paragraph 7(h) and 7(hI (1) of the answer of the Respondent, except that during the taxable year 1960, petitioner maintained personal and checking accounts in the Merchants Bank of New York, East River Savings Bank and Emigrant Savings Bank, and alleges that the deposits itemized in paragraph 7(h) (1) of the answer of Respondent were not taxable income, but were capital, as fully explained in Paragraph 5(a) and (b) of the original petition to which this Court is respectfully referred to herein.

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7(b). Denies each and every allegation in Paragraph 7(h(2) of the answer of the Respondent, and alleges that the sum of $41,520.18 was not taxable income to the petitioner in the taxable year 1960.

7(c). Admits that during the taxable year 1960, petitioner maintained brokerage accounts as alleged in Paragraph 7(3) of the answer of the Respondent.

7(d). Denies each and every allegation in Paragraph 7(h) (4) of the answer of the Respondent, and alleges that the net amount of the deposits set forth in subparagraph 7(h) (3) of the answer of the Respondent, was not taxable income for the year 1960 to the petitioner.

7(e). Denies each and every allegation in Paragraph 7(h) (5) of the answer of the Respondent, and alleges that the income tax filed by the petitioner was the correct return and that petitioner in his said return enumerated all of his income and expense for the taxable year 1960.

8. Denies each and every allegation contained in Paragraph 7(i) of the answer of the Respondent.

9. Admits the allegations contained in Paragraph 7(j) of the answer of the Respondent.

10. Denies each and every allegation contained in Paragraph 7(k) of the answer of the Respondent, and alleges that during the taxable year 1960, petitioner received a legacy in the sum of $2361.20 from the estate of Meyer Reich, deceased, who died on February 23, 1960, leaving a Last Will and Testament, dated May 25, 1959, and which

was admitted to probate on or about the 23rd day of May, 1960, in the Surrogate's Court, County of New York, State of New York. (File No. P.817-1960).

11. Denies each and every allegation contained in Paragraph 7(l) of the answer of the Respondent, and alleges that during the taxable year 1960, petitioner received non-taxable or excludable income, receipts, cash or other assets, other than the specific items and amounts thereof as described in Paragraph 7(i) (1) and (3) of the Respondent's answer.

12. Denies upon information and belief, each and every allegation contained in Paragraph 7(m) of the answer of the Respondent, and alleges that all dividend income received by the Petitioner during the taxable year 1960, was reported in theincome tax return filed by the petitioner for the taxable year 1960.

13. Denies each and every allegation contained in Paragraph 7(n) of the answer of the Respondent.

14. Upon information and belief, denies each and every allegation in Paragraphs 7(o) and 7(p) of the answer of the Respondent.

15. Denies each and every allegation contained in Paragraphs 7(q) and 7(r) of the answer of Respondent, and alleges that the petitioner was innocent of any fraud in the preparation and filing of his income tax return for the taxable year 1960, and the petitioner as heretofore alleged maintained

a complete and accurate record of his income producing activities and the said petitioner has produced complete and accurate records to the Respondent in connection with the examination of his income tax for the taxable years 1960

FURTHER REPLYING TO THE ANSWER OF THE RESPONDENT, PETITIONER ALLEGES:

16. Denies each and every allegation contained in Paragraph 8(a) of the answer of the Respondent, and alleges that the income tax return for the taxable year 1960, was not a false or fraudelant income tax return, and it is respectfully submitted that Respondent's determination and assessment of deficiencies for the taxable year 1960 is barred by the Statute of Limitations as provided in Section 6501, et seq. United States Code, Title 26, Internal Revenue Code.

17(a). Admits the allegations contained in Paragraph 8(b)/(1) of the answer of the Respondent.

17(b). Denies each and every allegation contained in Paragraph 8(b) (2) of the answer of the Respondent, and alleges that prior to the expiration of the time prescribed by Section 6501(a) of the Internal Revenue Code of 1954, for the assessment of income tax due from petitioner, for the taxable year 1960, the petitioner and the respondent on April 13, 1964, executed an agreement in writing extending the period of assessment of tax due for the taxable year 1960, to June 30, 1965. The said extended date for assessment of tax was further extended under a subsequent agreement in writing to June 30, 1966. Petitioner denies that any subsequent agreements extending the period of limitation of assessment to June 30, 1968, was ever agreed to by Petitioner.

17(c). Denies each and every allegation in Paragraph 8(b)(3) of the answer of Respondent, and alleges that Respondent's determination of petitioner's income tax liability for the taxable year, 1960, was not timely sent to petitioner, and the Respondent's determination and assessment of deficiency in income taxes for the aforesaid year is barred by the Statute of Limitations, provided in Section 6501, et seq., United States Code, Title 26, Internal Revenue Code.

WHEREFORE, Petitioner respectfully prays:

1. That the relief requested in the petition be granted, in all respects, and that the determination of the Commissioner of Internal Revenue, dated June 6, 1968, be vacated and annulled.

Frank L. Silverman
FRANK L. SILVERMAN.

STATE OF NEW YORK,)
COUNTY OF NEW YORK.) ss:

FRANK L. SILVERMAN, being duly sworn, says: That he is the Petitioner above named, and the foregoing reply was read by him, and that he is familiar with the statements contained therein, and that the statements contained therein are true, except as to those matters stated to be upon information and belief, and that as to those matters, he believes it to be true.

Subscribed and sworn to before
me, this 20 day of December,
1968.

Frank L. Silverman
FRANK L. SILVERMAN.

Lawrence N. Fariello
LAWRENCE N. FARIELLO, Notary Public
State of N. Y. No. 03-6233550
Qualified in Bronx County
Commission Expires March 30, 1970

Leave to file
GRANTED
(Signed) IRENE F. SCOTT
Judge

UNITED STATES TAX COURT
FILED
FEB 16 1973

UNITED STATES TAX COURT

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket No. 3506-68
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

AMENDMENT TO ANSWER

THE RESPONDENT, for amendment to the answer filed in the above-entitled case, amends paragraph 7(h)(1). to read as follows:

(h). The taxable income of the petitioner for the taxable year 1960 is as follows:

(1). During the taxable year 1960, petitioner maintained personal checking and savings accounts and made deposits in such accounts as follows

SERVED FEB 22 1973

THE RESPONDENT, for further Amendment to the Answer filed in the above-entitled case, amends paragraph 7.(h).(3) to read as follows:

(3) During the taxable year 1960, petitioner maintained brokerage accounts and made deposits therein as follows:

Source	Burnham & Co. #41840	J.H. Winston Co.	Banner Securities	C.B. Richards Co.
Total Deposits:	$14,722.53	$3,000.00	$2,500.00	$8,206.00
Less Eliminations: Bank transfers	12,695.53*	3,000.00	2,500.00	3,640.00**
	$ 2,027.00	-0-	-0-	$4,566.00

Total Net Unidentified deposits..................... $6,593.00

* The bank transfers made to the brokerage account of Burnham and Co. were as follows:

Date check received by Burnham & Co.	Amount
2-19-60	$1,951.25
3-9-60	3,549.06
4-6-60	1,074.50
7-22-60	70.36
8-12-60	714.00
9-7-60	2,027.00
10-20-60	2,690.50

** The bank transfers made to the brokerage account at C.B. Richards Co. were as follows:

Date check received by C.B. Richards	Amount
4-12-60	$2,640.00
7-1-60	1,000.00

WHEREFORE, the respondent prays that the Court grant the prayer requested in his original answer.

(Sgd) LEE H. HENKEL, JR. - EHH

LEE H. HENKEL, JR.,
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel
MICHAEL A. MENILLO,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

1040
U.S. Treasury Department
Internal Revenue Service

U.S. INDIVIDUAL INCOME TAX RETURN—1961

or taxable year beginning Jan. 1st. 1961, ending December 31 1961

● Attach Check or Money Order Here ●

PLEASE

First name and initial: FRANK L.
Last name: SILVERMAN
(If joint return of husband and wife, use first names and middle initials of both)

Home address: 316 East 8th Street
(Number and street or rural route)

New York 9, N.Y.
(City, town, or post office) (Postal zone number) (State)

Your Social Security Number: 124-20-8156
Occupation:
Wife's Social Security Number:
Occupation:

Check One ☐ Single; ☐ Unmarried "Head of Household"; ☐ Surviving widow or widower with dependent child;
☒ Married filing joint return; ☐ Married filing separate return—Name of wife (husband) Mrs Anna Silverma

INCOME—If joint return, include all income of both husband and wife)

1. Wages, salaries, tips, etc., and excess of allowances over business expenses.

Employer's name / Where employed (city and state)	(a) Wages, etc.	(b) Federal income tax withheld
State of N.Y., Gov. Alfred E. Smith Blding Albany, New York	$ 9725.44	$ 1507.21
If either you or your wife worked for more than one employer, see page 4 of instructions		
2. Totals here	9725.44	1507.21
3. "Sick pay" if included in line 1 (attach required statement)		▨

● Attach Copy B of Forms W-2 Here ●

4. Subtract line 3 from total wages	9725.44
5. Dividends, interest, rents, royalties, pensions, etc. (Schedule B—if required by instructions page 5)	1950.00
6. Business income (Schedule C) (Loss-$4121.47)	Loss(4121.47)
7. Sale or exchange of property (Schedule D)	
8. Farm income (Schedule F)	
9. Total (add lines 4 through 8)	6555.97

FIGURE YOUR TAX BY USING EITHER 10 OR 11

10. Tax Table
If line 9 is less than $5,000 and you do not itemize deductions—
Copy total exemptions from page 2 here ....
Find your tax in table on page 10 of instructions.
Do not use lines 11 a, b, c, or d.
Enter tax on line 12.

11. Tax Rate Schedule

a. If you itemize deductions, enter total from page 2. If line 9 is $5,000 or more and you do not itemize, enter 10% of line 9 but not more than $1,000 ($500 if married and filing separate return).	1029.10
b. Subtract line 11a from line 9	5526.87
c. Copy total exemptions from page 2 here 2, multiply by $600	1200.00
d. Subtract line 11c from line 11b. Figure your tax on this amount by using tax rate schedule on page 9 of instructions and enter tax on line 12.	4326.47

12. Tax (from either tax table or tax rate schedule)	871.38
13. Self-employment tax (Schedule C-3 or F-1)	
14. Total (add lines 12 and 13)	

PAYMENTS AND CREDITS

15. a. Tax withheld (line 2, col. (b) above). Attach Forms W-2	1507.21	
b. Payments and credits on 1961 Declaration of Estimated Tax		
c. Dividends received credit	68.00	
d. Retirement income credit		
e. Other credits (Specify—see page 5 of instructions)		
f. Total (add lines a, b, c, d and e)		1575.21
District Director's office where amount on line 15b was paid		

TAX DUE OR REFUND

16. If payments and credits (line 15f) are less than tax (line 14), enter Balance Due here. **Pay in full with this return to "Internal Revenue Service."**	
17. If payments and credits (line 15f) are larger than tax (line 14), enter Overpayment here	703.83
18. Line 17 to be: (a) Credited on 1962 estimated tax $........; (b) Refunded $703.83	

I declare under penalties of perjury that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here 3/16/62
(Taxpayer's signature and date) (If joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)

Sign here ....
(Signature of preparer other than taxpayer) (Address) (Date)

NO. 3566-A
EXH. 2-B

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A-43

SCHEDULE A.—EXEMPTIONS (See page 6 of instructions)

1. Exemptions for yourself—and wife (only if all her income is included in this return, or she had no income)

Check blocks which apply.

(a) Regular $600 exemption	☒ Yourself	☒ Wife	Enter number of exemptions checked → 2
(b) Additional $600 exemption if 65 or over at end of 1961	☐ Yourself	☐ Wife	
(c) Additional $600 exemption if blind at end of 1961	☐ Yourself	☐ Wife	

2. Exemptions for your children and other dependents (list below)

• If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 6 of instructions.

NAME Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent	
				$	$	→
						→
						→
						→
						→
						→
						→
						→

3. Total exemptions. (Enter here and on line 10 or 11c, page 1)

ITEMIZED DEDUCTIONS—If you do not use tax table or standard deduction

If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize

Show to whom paid. If necessary, write more than one item on a line or attach additional sheets. Please put your name and address on any attachment

Contributions (If other than money, submit description of property and method of valuation)	Fed.Rep.Club-Journal,New York City		100.00
	Urban League,New York City		40.00
	Mahopac Temple,Mahopac,New York		65.00
	Sadie Koeing Aid Society,New York City		53.00
	Red Cross,Heart Fund,Salvation Army,etc.,		100.00
	Total paid (not to exceed 20% of line 9, page 1, except as described on page 7 of instructions)	$ 358.00	
Interest			
	Total interest		
Taxes	Real estate taxes 211.13 State income taxes 182.50		
	State and local sales taxes 192.47 Other taxes (specify) 75.00		
	Mahopac Owners Association, Inc.,Mahopac,New York		
	Total taxes	661.10	

Medical and dental expense
(Submit itemized list. Do not enter any expense compensated by insurance or otherwise)

NOTE: If you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of Instructions for possible larger deduction.

1. Total cost of medicine and drugs $
2. Enter 1% of line 9, page 1
3. Subtract line 2 from line 1
4. Other medical and dental expenses (including hospital insurance premiums)
5. Total (add lines 3 and 4)
6. Enter 3% of line 9, page 1 $
7. Subtract line 6 from line 5; see page 8 of instructions for maximum limitation

Other deductions
(See page 8 of instructions and attach required information)

Total

TOTAL DEDUCTIONS (Enter here and on line 11a, page 1) $ 1039.10

EXPENSE ACCOUNT INFORMATION

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☐ No
If "Yes," did you submit itemized accounting of expenses to your employer? ☐ Yes ☐ No
See page 4, instructions.

U.S. GOVERNMENT PRINTING OFFICE : 1961 O—600580

SCHEDULE B
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

SUPPLEMENTAL SCHEDULE OF INCOME AND CREDITS

(From all sources other than wages, business, farming, and sale or exchange of property)

Attach this Schedule to your Individual Income Tax Return, Form 1040

1961

Name and address as shown on page 1 of Form 1040. Frank L. Silverman, 316 East 8th Street, New York 9,

Part I.—DIVIDEND INCOME (Income from savings (building) and loan associations and credit unions should be entered as interest in Part II)

	Amount	
1. Name of qualifying corporation declaring dividend: (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)		
Pan Am World Airline, Corp.	800.00	
Am. Foreign Power Company	400.00	
Sheller Mfg. Company	200.00	
Penn. R.R. Company	100.00	
Universal Marion Corp., Jacksonville, Florida.	500.00	
2. Total	2000.00	
3. Exclusion of $50 (If both husband and wife received dividends, each is entitled to exclude not more than $50 of his (her) own dividends)	50.00	
4. Subtract line 3 from line 2. Enter here and on line 1, Part VII	1950.00	
5. Name of nonqualifying corporation declaring dividend:		
6. Total (add lines 4 and 5)	→	1950.00

Part II.—INTEREST INCOME (This includes interest credited to your account)

Name of payer	Amount	Name of payer	Amount
		Total →	

Part III.—PENSION AND ANNUITY INCOME

A.—General Rule (if you did not contribute to the cost of the pension or annuity, enter the total amount received on line 6 and omit lines 1 through 5.)

1. Investment in contract		4. Amount received this year	$	
2. Expected return		5. Amount excludable (line 4 multiplied by line 3)		
3. Percentage of income to be excluded (line 1 divided by line 2)	%	6. Taxable portion (excess of line 4 over line 5)		

B.—Where your employer has contributed part of the cost and your contribution will be recovered tax-free within 3 years.
If your cost was fully recovered in prior years, enter the total amount received in line 5 and omit lines 1 through 4.

1. Cost of annuity (amounts you paid)		4. Amount received this year		
2. Cost received tax-free in past years				
3. Remainder of cost (line 1 less line 2)		5. Taxable portion (excess, if any, of line 4 over line 3)		

Part IV.—RENT AND ROYALTY INCOME

1. Kind and location of property (Identify whether rent or royalty)	2. Total amount of rents or royalties	3. Depreciation (explain in Part VI) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
1. Totals				

2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)

Part V.—OTHER INCOME OR LOSSES

1. Partnerships (name, address, and nature of income)

2. Estates or trusts (name and address)

3. Other sources (state nature)

TOTAL INCOME (OR LOSS) FROM ABOVE SOURCES (Enter here and on line 5, page 1, of Form 1040)

Part VI.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN PART IV

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis (exclude land)	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year
8. Total						
Amount of additional first-year depreciation included above						

Part VII.—DIVIDENDS RECEIVED CREDIT

1. Amount of dividends on line 4, Part I
2. Tentative credit (4% of line 1)

LIMITATION ON CREDIT

3. Tax shown on line 12, page 1 of Form 1040, less amount, if any, of credit for foreign taxes
4. 4% of taxable income (see below)

Taxable Income Means
(a) If tax is computed, the amount shown on line 11d, page 1 of Form 1040.
(b) If Tax Table is used, the amount shown on line 9, page 1 of Form 1040, less 10% thereof, and less the deduction for exemptions ($600 multiplied by the number of exemptions claimed on line 3, Schedule A, page 2 of Form 1040).

5. Dividends received credit. Enter here and on line 15(c), page 1 of Form 1040, the smallest of the amounts on line 2, 3, or 4, above

Part VIII.—RETIREMENT INCOME CREDIT

This credit does not apply
1. If you received pensions or annuities of $1,200 or more from Social Security or Railroad Retirement;
2. If you are under 65 years of age and had "earned income" of $2,100 or more; OR
3. If you are 65 or over and under 72, and had "earned income" of $2,400 or more

If separate return, use column B only. If joint return, use column A for wife and column B for husband ——→	A	B
Did you receive earned income in excess of $600 in each of any 10 calendar years before the taxable year 1961? (Widows or widowers see instructions, page B–4)	☐ Yes ☐ No	☐ Yes ☐ No
If answer above is "Yes" in either column, furnish all information below in that column.		
1. Retirement income for taxable year:		
(a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems and included in line 9, page 1, of Form 1040		
(b) For taxpayers 65 years of age or older: Enter total of pensions and annuities, interest, and dividends included in line 9, page 1 of Form 1040, and gross rents included in column 2, Part IV of this schedule		
LIMITATION ON RETIREMENT INCOME		
2. Maximum amount of retirement income for credit computation	1,200 00	1,200 00
3. Deduct:		
(a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income		
(b) Earned income received in taxable year (Does not apply to persons 72 years of age or over):		
(1) Taxpayers under 65 years of age, enter amount in excess of $900		
(2) Taxpayers 65 or over and under 72, enter amount in excess of $1,200		
4. Total of lines 3(a) and 3(b)		
5. Balance (line 2 minus line 4)		
6. Line 5 or line 1, whichever is smaller		
7. Tentative credit (20% of line 6)		

8. Total tentative credit (total of amounts on line 7, columns A and B)

LIMITATION ON RETIREMENT INCOME CREDIT

9. Amount of tax shown on line 12, page 1 of Form 1040
10. Less: Dividends received credit from line 5, Part VII above
11. Subtract line 10 from line 9
12. Retirement income credit. Enter here and on line 15(d), page 1 of Form 1040, the amount on line 8 or line 11, whichever is smaller

U. S. GOVERNMENT PRINTING OFFICE : 1962 O - 625454

A-46

WITHHOLDING TAX STATEMENT 1961

Federal Taxes Withheld From Wages

Type or print EMPLOYER'S identification number, name, and address above.

Copy A—For District Director

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ Total F.I.C.A. Wages paid in 1961	$ F.I.C.A. employee tax withheld, if any	$ 1206.00 Total Wages* paid in 1961	$ None Federal Income Tax withheld, if any	

Irwin B. Silverman
316 E. 8th Street
New York City, N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

Frank L. Silverman
280 Broadway, N.Y. 7, N.Y.
EMPLOYER: See instructions on other side.
12-1668857

FOR USE OF INTERNAL REVENUE SERVICE

Employee's Copy and Employer's Copy compared . . . .

FORM W-2—U. S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

[illegible] GPO [illegible]-O-593251

A-47

WITHHOLDING TAX STATEMENT 1961

Federal Taxes Withheld From Wages

Copy A—For District Director

Type or print EMPLOYER'S identification number, name, and address above.

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ Total F.I.C.A. Wages paid in 1961	$ F.I.C.A. employee tax withheld, if any	$ 1,537.83 Total Wages* paid in 1961	$ None. Federal Income Tax withheld, if any	

Morris Schaoffer
28-09 Seagirt Blvd
Edgemere, N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

FRANK L.SILVERMAN
280 Broadway, N.Y.7, N.Y.
EMPLOYER: See instructions on other side.
12-1668857

FOR USE OF INTERNAL REVENUE SERVICE

Employee's Copy and Employer's Copy compared . . . .

FORM W-2—U. S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

☆☆☆ GPO 1961—O-598251

WITHHOLDING TAX STATEMENT 1961

Federal Taxes Withheld From Wages

Copy A—For District Director

Type or print EMPLOYER'S identification number, name, and address above.

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ Total F.I.C.A. Wages paid in 1961	$ F.I.C.A. employee tax withheld, if any	$ 2100.00 Total Wages* paid in 1961	$ None. Federal Income Tax withheld, if any	

Grabow & Katz, Esqs.
160 Broadway
New York City, N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

FRANK L.SILVERMAN, ESQ
280 Broadway, N.Y.7, N.Y.
EMPLOYER: See instructions on other side.
12-1668857

FOR USE OF INTERNAL REVENUE SERVICE

Employee's Copy and Employer's Copy compared . . . .

FORM W-2—U. S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

☆☆☆ GPO 1961—O-598251

A-48

SCHEDULE C
(Form 1040)
U. S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1961

Attach this Schedule to your Income Tax Return, Form 1040 — Partnerships, Joint Ventures, Etc., Must File On Form 1065

Name and address as shown on page 1, Form 1040

Frank L. Silverman, 280 Broadway, New York 7, N.Y.

A. Principal business activity (See separate instructions) Lawyer (Retail trade, wholesale trade, lawyer, etc.) (Principal product or service)

B. Business name FRANK L. SILVERMAN

C. Employer Identification Number 12-1668357

D. Business location 280 Broadway, New York 7, N.Y. (Number and street or rural route) (City or post office) (State)

1. Total receipts $8137.90 less allowances, rebates, and returns $		8137.90
2. Inventory at beginning of year (If different than last year's closing inventory attach explanation)		
3. Merchandise purchased $ less any items withdrawn from business for personal use $		
4. Cost of labor (do not include salary paid to yourself)	5118.83	
5. Material and supplies		
6. Other costs (explain in Schedule C-2)		
7. Total of lines 2 through 6		
8. Inventory at end of this year		
9. Cost of goods sold (line 7 less line 8)		5118.83
10. Gross profit (subtract line 9 from line 1)		3019.07

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included on line 4 (exclude any paid to yourself)		
12. Rent on business property	1200.00	
13. Interest on business indebtedness		
14. Taxes on business and business property		
15. Losses of business property (attach statement)		
16. Bad debts arising from sales or services		
17. Depreciation (explain in Schedule C-1)	3734.54	
18. Repairs (explain in Schedule C-2)		
19. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
20. Amortization (attach statement)		
21. Insurance		
22. Legal and professional fees		
23. Commissions		
24. Other business expenses (explain in Schedule C-2)	2206.10	
25. Total of lines 11 through 24		7140.54
26. Net profit (or loss) (subtract line 25 from line 10). Enter here; on line 1, Schedule C-3; and on line 6, page 1, Form 1040		Loss* (4121.47) Loss* (4121.47)

INVENTORY INFORMATION

1. Method of inventory valuation—Cost ☐; lower of cost or market ☐; other ☐. If other, attach explanation.
2. Was the method of inventory valuation indicated above the same method used for 1960? ☐ Yes ☐ No. If "No" attach explanation.
3. If inventory is valued at lower of cost or market, enter total cost $ and total market valuation $ of those items valued at market.
4. If closing inventory was taken by physical count, enter date inventory was taken If not at end of year, attach an explanation of how the end of year count was determined.
5. If closing inventory was not taken by a physical count, attach an explanation of how inventory items were counted or measured.

NOT LIABLE

16—76479-1

A-49

SCHEDULE C-1. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 17.

1. Kind of property (if buildings, state material of which constructed). Exclude land and other nondepreciable property	2. Date acquired	3. Cost or other basis (exclude land)	4. Depreciation allowed (or allowable) in prior years	5. Method of computing depreciation	6. Rate (%) or life (years)	7. Depreciation for this year
		$	$			$

1. Total
2. Less: Amount of depreciation claimed elsewhere in Schedule C
3. Balance—Enter here and on line 17, page 1

Amount of additional first-year depreciation included above ☐

SCHEDULE C-2. EXPLANATION OF LINES 6, 18, AND 24

Line No.	Explanation	Amount	Line No.	Explanation	Amount
		$			$

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 26, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and Wages
Owner		XXXXXXXXXXX
1.		
2.		
3.		
4.		
5.		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

E. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

F. Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

G. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

H. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

Schedule C-1 Line 17

1961 Olds-Purchased September,190	$3600.00
Depreciated in 1960 return to	3300.00
1961 Olds depreciated in 1960 return	$3300.00
1961 Olds depreciated in the 1961 return to	$1650.00
Insurance	490.78
Garage,etc.,	474.00
Gas & Oil,etc.,	495.00
Tolls	50.00
Meter Parking	150.00
Plates-1961,New York State	26.25
Miscellaneous services,etc.,	75.00
Repairs,etc.,	73.51
Depreciation of office furniture-1961	250.00*
	$3734.54

1960 Purchased office furniture

One Office Sofa	$135.75
Office desk & chair	285.75
Four Office chairs	100.00
One office desk	154.00
One Air Conditioner	300.57
Office Typewriter	118.45
Miscellaneous office Equipment	109.48
	$1250.00
20% Depreciation for year 1961	250.00*

Schedule C-2 Line 24

New York County Lawyers Association	$ 35.00
U.S.Postage,etc.,	125.00
Telanserphone Co.	114.00
Stationary & Printing,etc.,	227.60
New York Telephone Company	474/72
Electric Power,etc.,	241.78
Steno.services	488.00
Petty cash ,etc.,	125.00
Entertainment of clients,etc.,	375.00
Total..	$2206.10

1040

U.S. INDIVIDUAL INCOME TAX RETURN—1962

U.S. Treasury Department
Internal Revenue Service

or taxable year beginning January 1st, 1962, ending December 31, 1963

Your Social Security Number: 124-20-3156

Occupation:

First name and initial: FRANK L. Last name: SILVERMAN 2

(If joint return of husband and wife, use first names and middle initials of both)

Wife's Social Security Number:

Home address: 316 East 8th Street
(Number and street or rural route)

Occupation:

New York 9, N.Y. (City, town, or post office) (Postal zone number) N.Y. (State)

Print or Type

Check one: ☐ Single, ☐ Unmarried "Head of Household", ☐ Surviving widow or widower with dependent child, ☒ Married filing joint return (even if only one had income); ☐ Married filing separate return—If wife or husband also filing separately, give name.

INCOME—(If joint return, include all income of both husband and wife)

1. Wages, salaries, tips, etc., and excess of allowances over business expenses.

Employer's name / Where employed (city and state)	(a) Wages, etc.	(b) Federal income tax withheld
State of N.Y. Gov. Alfred E. Smith Bldg. State Office Building, Albany, N.Y.	$ 10841.11	$ 1708.01

If either you or your wife worked for more than one employer, see page 4 of instructions

2. Totals	10841.11	1708.01
3. "Sick pay" if included in line 1 (attach required statement)		
4. Subtract line 3 from total wages		10841.11
5a. Dividends (Schedule B)		3303.0
b. Interest (Schedule B or other list)		
c. Rents, royalties, pensions, etc. (Schedule B)		
6. Business income (Schedule C) Schedule attached		(5338.4
7. Sale or exchange of property (Schedule D) Schedule attached	Loss	(377.3
8. Farm income (Schedule F)		
9. Total (add lines 4 through 8)		8427.75

Attach Copy B of Forms W-2 Here

FIGURE YOUR TAX BY USING EITHER 10 OR 11

10. Tax Table
If line 9 is less than $5,000 and you do not itemize deductions—
Complete page 2 exemption schedule.
Copy total exemptions here ....
Find your tax in table on page 10 of instructions.
Do not use lines 11 a, b, c, or d.
Enter tax on line 12.

11. Tax Rate Schedule

a. If you itemize deductions, enter total from page 2. If line 9 is $5,000 or more and you do not itemize, enter 10% of line 9 but not more than $1,000 ($500 if married and filing separate return).	1280.48
b. Subtract line 11a from line 9	7147.27
c. Copy total exemptions from page 2 here 2, multiply by $600	1200.00
d. Subtract line 11c from line 11b. Figure your tax on this amount by using tax rate schedule on page 9 of instructions and enter tax on line 12.	5947.27

12. Tax (from either tax table or tax rate schedule)	1228.4
13. Self-employment tax (Schedule C-3 or F-1)	
14. Total (add lines 12 and 13)	

PAYMENTS AND CREDITS

15a. Tax withheld (line 2, col. (b) above). Attach Forms W-2	1708.01	
b. Payments and credits on 1962 Declaration of Estimated Tax		
c. Dividends received credit	132.12	
d. Retirement income credit		
e. Investment credit (Form 3468)		
f. Other credits (Specify—see page 5 of instructions)		
g. Total (add lines a, b, c, d, e, and f)		1840.13

District Director's office where amount on line 15b was paid ....

TAX DUE OR REFUND

If payments and credits (line 15g) are less than tax (line 14), enter Balance Due here. Pay in full with this return to "Internal Revenue Service." File with your District Director.	
If payments and credits (line 15g) are larger than tax (line 14), enter Overpayment here	611.73
Amount of line 17 you wish credited to 1963 Estimated Tax	
Subtract line 18 from line 17. Apply this balance to: ☐ U.S. Savings Bonds; or ☒ Refund	611.73

Pay by Check or Money Order

☆ List your exemptions and sign on other side

c39—16—71177—1

EXH. 3-C

BEST COPY AVAILABLE

1. Exemptions for yourself—and wife (only if all her income is included in this return, or she had no income)

Check boxes which apply.				
	(a) Regular $600 exemption	☒ Yourself	☒ Wife	Enter number of boxes checked → 2
	(b) Additional $600 exemption if 65 or over at end of 1962	☐ Yourself	☐ Wife	
	(c) Additional $600 exemption if blind at end of 1962	☐ Yourself	☐ Wife	

2. Exemptions for your children and other dependents (list below)

- If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 6 of instructions.

NAME Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent	
				$	$	→
						→
						→
						→
						→
						→
						→

3. Total exemptions (lines 1 and 2 above). (Enter here and on line 10 or 11c, page 1) →

ITEMIZED DEDUCTIONS—If you do not use tax table or standard deduction

If husband and wife, not legally separated, file separate returns and one itemizes deductions, the other must also itemize

If necessary, write more than one item on a line or attach additional sheets. Put name, address and Social Security number on all attachments

Contributions (If other than money, submit description of property, including cost or other basis, date of acquisition and method of valuation)

Mahopac Temple, Mahopac, N.Y.	
Sadie Koenig Aid Society, New York, N.Y.	126.00
Fed. Rep. Club Journal, New York, N.Y.	78.00
Red Cross, Heart Fund, Cancer etc.,	100.00
Salvation Army, March of Dimes, etc., New York City,	100.00
East Side Hebrew Institute, etc.,	100.00
Total paid (not to exceed 20% of line 9, page 1, except as described on page 7 of instructions) →	100.00
	$ 604.00

Interest expense

Total interest →

Taxes

Real estate taxes 212.78 State income taxes 108.89

State and local sales taxes 224.81 Other taxes (specify) 100.00

Mahopac Point Owners Association, Mahopac, N.Y.

Total taxes → 646.48

Medical and dental expense (Submit itemized list. Do not enter any expense compensated by insurance or otherwise)

NOTE: If you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of Instructions for possible larger deduction.

1. Total cost of medicine and drugs $
2. Enter 1% of line 9, page 1
3. Subtract line 2 from line 1
4. Other medical, dental expenses (Include hospital insurance premiums)
5. Total (add lines 3 and 4)
6. Enter 3% of line 9, page 1 (see note above)
7. Subtract line 6 from line 5; see page 8 of instructions for maximum limitation $

Other deductions (See page 8 of instructions)

New York Retail Sales Taxes 30.00

Total → 1280.48

Total deductions (Enter here and on line 11a, page 1) → $ 1280.48

EXPENSE ACCOUNT INFORMATION

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☒ No

If "Yes," did you submit itemized accounting of all such expenses to your employer? ☐ Yes ☐ No

See page 4, instructions.

Did you file a return last year? ☒ Yes ☐ No. If name or address on last year's returns was different from this year, enter name and address used last year.

I declare under penalties of perjury that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ......
(Taxpayer's signature and date)

(If joint return, BOTH HUSBAND AND WIFE MUST SIGN) March 16, 1963

Sign here ......
(Wife's signature and date)

(Signature of preparer other than taxpayer) (Address) (Date)

GPO c59—16—77172—1

SCHEDULE B
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

PLEMENTAL SCHEDULE OF INCOME AND CREDITS

(From all sources other than wages, business, farming, and sale or exchange of property)

Attach this schedule to your income tax return, Form 1040

1962

Name and address as shown on page 1 of Form 1040: FRANK L.SILVERMAN,316 E.8th Street,N.Y.9,N.Y.

Your Social Security Number: 124-20-8156

Part I.—DIVIDEND INCOME (Income from savings (building) and loan associations and credit unions should be entered as interest in Part II)

1. Name of qualifying corporation declaring dividend: (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)

				Amount
		Pan Am. (h)	800.00	
		Am.Foreign Power	484.00	
Budd Mfg.Corp.(h)	$135.00	Sheller Mfg.Corp.	200.00	
Standard Sanitary Corp.	$450.	Penn.RR.Corp.	100.00	
Det.Steel Corp.	$207.	Universal Marion Corp	250.00	
Crucible Steel Co.	400.	Pitts.Coke & Chemical	147.00	1222.00
2. Total	$1222.*	National Casting Corp.	150.00	2131.00

3. Exclusion of $50 (If both husband and wife received dividends, each is entitled to exclude not more than $50 of his (her) own dividends) .... $3353.00 / 50.00

4. Subtract line 3 from line 2. Enter here and on line 1, Part VII $3303.00

5. Name of nonqualifying corporation declaring dividend:

6. Total (add lines 4 and 5). Enter here and on line 5a, page 1, Form 1040 ....

Part II.—INTEREST INCOME (This includes interest credited to your account)

Note: A separate attachment may be used if interest is the only income to be reported on this schedule.

1. Name of payer (more than one entry may be made on a line) .... Amount

2. Total—Enter here and on line 5b, page 1, Form 1040 ....

Part III.—PENSION AND ANNUITY INCOME

A.—General Rule (If you did not contribute to the cost of the pension or annuity, enter the total amount received on line 6 and omit lines 1 through 5.) Amount

1. Investment in contract ....
2. Expected return ....
3. Percentage of income to be excluded (line 1 divided by line 2) .... %
4. Amount received this year ....
5. Amount excludable (line 4 multiplied by line 3) ....
6. Taxable portion (excess of line 4 over line 5) ....

B.—Special Rule—Where your employer has contributed part of the cost and your own contribution will be recovered tax-free within 3 years. If your cost was fully recovered in prior years, enter the total amount received in line 5 and omit lines 1 through 4.

1. Cost of annuity (amounts you paid) ....
2. Cost received tax-free in past years ....
3. Remainder of cost (line 1 less line 2) ....
4. Amount received this year ....
5. Taxable portion (excess, if any, of line 4 over line 3) ....

Part IV.—RENT AND ROYALTY INCOME

1. Kind and location of property (Identify whether rent or royalty)	2. Total amount of rents or royalties	3. Depreciation (explain in Part VI) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
1. Totals				

2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5) ....

Part V.—OTHER INCOME OR LOSSES

1. Partnerships (name, address, and nature of income)

2. Estates or trusts (name and address)

3. Other sources (state nature)

TOTAL INCOME (or loss) from Parts III, IV, and V (Enter here and on line 5c, page 1, of Form 1040) ....

Part VI.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN PART IV

—This schedule is designed for taxpayers using the new guideline lives and administrative procedure described in Revenue Procedure 62–21 as well as for those taxpayers who wish to continue using previously authorized procedures. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
Total cost or other basis....							

1. Total depreciation..		
2. Amount of additional first-year depreciation included above..............................		
3. Cost or other basis of fully depreciated assets still in use..............................		

Part VII.—DIVIDENDS RECEIVED CREDIT

1. Amount of dividends on line 4, Part I..	3303.00
2. Tentative credit (4% of line 1)..	132.12
3. Tax shown on line 12, page 1 of Form 1040, less amount, if any, of credit for foreign taxes..............	
4. 4% of taxable income (see below)..	
Taxable Income Means { (a) If tax is computed, the amount shown on line 11d, page 1 of Form 1040. (b) If Tax Table is used, the amount shown on line 9, page 1 of Form 1040, less 10% thereof, and less the deduction for exemptions ($600 multiplied by the number of exemptions claimed on line [illegible] Schedule A, page 2 of Form 1040).	
5. Credit. Enter here and on line 15(c), Form 1040, the smallest of the amounts on line 2, 3, or 4, above...	132.12

Part VIII.—RETIREMENT INCOME CREDIT

	A	B
If separate return, use column B only. If joint return, use column A for wife and column B for husband——→		
Did you receive earned income in excess of $600 in each of any 10 calendar years before the taxable year 1962? (Widows or widowers see instructions, page B–4)............................	☐ Yes ☐ No	☐ Yes ☐ No
If answer above is "Yes" in either column, furnish all information below in that column.		
1. Retirement income for taxable year:		
(a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems (e.g. Fed., State Govts., etc.) and included in line 9, page 1, of Form 1040. •		
(b) For taxpayers 65 years of age or older: Enter total of pensions and annuities, interest, and dividends included in line 9, page 1 of Form 1040, and gross rents included in column 2, Part IV of this schedule.... •		
2. Maximum amount of retirement income for credit computation..............................	1,524 00	1,524 00
3. Deduct:		
(a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income. •		
(b) Earned income received in taxable year (Does not apply to persons 72 years of age or over):		
(1) Taxpayers under 62 years of age, enter amount in excess of $900 .... •		
(2) Taxpayers 62 or over but under 72, enter amount determined as follows: if $1,200 or less, enter zero........; if over $1,200 but not over $1,700, enter ½ of amount over $1,200; or if over $1,700, enter excess over $1,450........................ } •		
4. Total of lines 3(a) and 3(b)................		
5. Balance (line 2 minus line 4)................................		
6. Line 5 or line 1, whichever is smaller................................		
7. Tentative credit (20% of line 6)................................		

8. Total tentative credit (total of amounts on line 7, columns A and B)..............................	
LIMITATION ON RETIREMENT INCOME CREDIT	
9. Amount of tax shown on line 12, page 1 of Form 1040..............................	
10. Less: Total of any amounts shown on lines 15(c) and 15(f), page 1, Form 1040..............................	
11. Subtract line 10 from line 9..............................	
12. Credit. Enter here and on line 15(d), Form 1040, the amount on line 8 or line 11, whichever is smaller...	

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WITHHOLDING TAX STATEMENT 1962

Federal taxes withheld from wages

Type or print EMPLOYER'S identification number, name, and address above.

Copy A—For District Director

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ Total F.I.C.A. wages paid in 1962	$ F.I.C.A. employee tax withheld, if any	$ 1839.05 Total wages* paid in 1962	$ None. Federal income tax withheld, if any	

Morris Schaeffer
28-09 Seagirt Boulevard
Arvern, N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

FRANK L.SILVERMAN
280 Broadway, N.Y.7, N.Y.

EMPLOYER: See instructions on other side.

12-1668857

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared ....

FORM W-2—U. S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

A-56

SCHEDULE C
(Form 1040)
U. S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1962

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040: FRANK L.SILVERMAN,316 East 8th Street,N.Y.9,N.Y.
Your Social Security Number: 124-20-8156

A. Principal business activity (See separate instructions): Lawyer; product
(For example: retail—grocer, wholesale—tobacco, legal—services, manufacturing—furniture, etc.)

B. Business name: FRANK L.SILVERMAN
C. Employer Identification Number: 12-1662357

D. Business location: 280 Broadway, New York 7, N.Y.
(Number and street or rural route) (City or post office) (State)

E. Indicate method of accounting: ☒ cash; ☐ accrual; ☐ other.

1. Gross receipts or gross sales $3246.39 Less: Returns and allowances $		3246.	39
2. Inventory at beginning of year (If different than last year's closing inventory attach explanation)			
3. Merchandise purchased $, less cost of any items withdrawn from business for personal use $			
4. Cost of labor (do not include salary paid to yourself)	1839.05		
5. Material and supplies			
6. Other costs (explain in Schedule C-1)			
7. Total of lines 2 through 6			
8. Inventory at end of this year			
9. Cost of goods sold (line 7 less line 8)		1839.	05
10. **Gross profit** (subtract line 9 from line 1)		1407.	34

OTHER BUSINESS DEDUCTIONS

11. Depreciation (explain in Schedule C-2) Schedule attached.	2800.65		
12. Taxes on business and business property (explain in Schedule C-1)			
13. Rent on business property	1200.00		
14. Repairs (explain in Schedule C-1)			
15. Salaries and wages not included on line 4 (exclude any paid to yourself)			
16. Insurance			
17. Legal and professional fees			
18. Commissions			
19. Amortization (attach statement)			
20. Interest on business indebtedness			
21. Bad debts arising from sales or services			
22. Losses of business property (attach statement)			
23. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)			
24. Other business expenses (explain in Schedule C-1) Schedule attached.	2745.11		
25. Total of lines 11 through 24		6745.	76
26. **Net profit (or loss)** (subtract line 25 from line 10). Enter here; on line 1, Schedule C-3; and on line 6, page 1, Form 1040		Loss (5338.	42)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 24

Line No.	Explanation	Amount	Line No.	Explanation	Amount
24	C-1 Attached.	$ 2745.11			$

A-57

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the new guideline lives and administrative procedures described in Revenue Procedure 62-21 as well as for those taxpayers who wish to continue using previously authorized procedures. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
C-2 Line 11							
1. Totals	2800.65						

2. Less: Amount of depreciation claimed elsewhere in Schedule C

3. Balance—Enter here and on line 11, page 1 2800.65

4. Amount of additional first-year depreciation included above ☐

5. Cost or other basis of fully depreciated assets still in use ☐

INVENTORY QUESTIONS

1. Was inventory valued at—Cost ☐; lower of cost or market ☐; other ☐. If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☐ No ☐. If "Yes," were the write-downs computed on the basis of:
   - (a) ☐ Percentage reductions from parts of the inventory
   - (b) ☐ Percentage reductions from the total inventory
   - (c) ☐ Valuation of individual items.

   If "a" or "b" is checked, enter the percentage of write-downs ....%. For "a," "b," or "c" enter the dollar amount of write-downs $............

   (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year?
   Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☐. If "Yes," attach explanation.

NOTE: If a direct answer cannot be given to a question, attach explanation.

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 26, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and Wages
Owner		XXXXXXXXXXXXX
1.		
2.		
3.		
4.		
5.		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

G. Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

H. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

I. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

SCHEDULE (C-2,Line 11)

1961	Olds purchased,September,1960 Houston Olds,Inc.		$3600.00
	Depreciated to 1961	$1650.00	
1961	Olds depreciated to 1962		825.00
	Insurance		424.92
	Garage,rent etc.,		474.00
	Gas & Oil,etc.,		490.16
	Tolls		45.00
	Meter Parking		120.00
	N.Y.State Registration fee(Plates)		26.25
	Miscellaneous services,etc.,		75.00
	Repairs,olds		70.32
	Depreciation of office furniture,1962		250.00 **
			$2800.65

1960 Purchased office furniture:

One Office Sofa	$183.75
Office Desk & Chair	283.75
Four Office chairs	100.00
One Office Desk	154.00
One Air Conditioner	300.57
Office Typewriter	118.45
Miscellaneous office Equipment	109.48
Total	1250.00
20% Depreciation for year 1962	250.00 **

SCHEDULE(C-1,Line 24)

N.Y.County Lawyers Association	35.00
U.S.Postage	175.00
Telanswering phone service	150.00
Stationery & Printing	235.60
New York Telephone Co.,	472.44
Electric & Power,etc.,	242.70
Repairs of typewriter	51.81
Process services	153.50
Photographs,exhibits	94.00
Steno.Services,etc.,	475.00
Hotel Accommodations	200.15
Petty Cash,etc.,	75.00
Entertainment of clients	250.00
Fuel Oil	134.91
Total	$2745.11

A-59

SCHEDULE D
(Form 1040)

U.S. Treasury Department—Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

Attach this schedule to your income tax return, Form 1040

1962

Name and address as shown on page 1 of Form 1040: FRANK L.SILVERMAN,316 East 8th Street,N.Y.9,N.Y.

Your Social Security Number: 124-20-6156

Part I—CAPITAL ASSETS

Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price (contract price)	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1.						

2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
3. Enter unused capital loss carryover from 5 preceding taxable years (Attach statement)
4. Net short-term gain (or loss) from lines 1, 2, and 3

Long-term capital gains and losses—assets held more than 6 months

a.	b.	c.	d.	e.	f.	g.
5. 1000 Sh.of Hapman Corp.	3/30/61	2/2/62	$2244.12		$3000.00	(755.88)
Total long-term gross sales price						

6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries — (-755.88
7. Capital gain dividends
8. Net long-term gain (or loss) from lines 5, 6, and 7 — (-755.88
9. Combine the amounts shown on lines 4 and 8, and enter the net gain (or loss) here
10a. If line 9 shows a GAIN—Enter 50% of line 8 or 50% of line 9, whichever is smaller. (Enter zero if there is a loss or no entry on line 8.) (See reverse side for computation of alternative tax) — 0
b. Subtract line 10a from line 9
11. If line 9 shows a LOSS—Enter here the smallest of the following: (a) the amount on line 9; (b) taxable income computed without regard to capital gains and losses and the deduction for exemptions; or (c) $1,000 ... Loss — (377.94; 377.94

Part II—PROPERTY OTHER THAN CAPITAL ASSETS

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price (contract price)	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
12.						

13. Enter your share of non-capital gain (or loss) from partnerships and fiduciaries
14. Net gain (or loss) from lines 12 and 13

Part III—TOTAL GAINS OR LOSSES FROM SALE OR EXCHANGE OF PROPERTY

15. Net gain (or loss) from either line 10b or 11
16. Net gain (or loss) from line 14
17. Total net gain (or loss), combine lines 15 and 16. Enter here and on line 7, page 1 of Form 1040

P.O. Box 2954, Church St. Sta., New York, N.Y. 10003
Department of the Treasury
Regional Commissioner
Internal Revenue Service
North-Atlantic Region

Date: SEP 15 1972
In reply refer to: AP:NY:DLK:MS

Ex. "A"

Exhibit "A"

Mr. Frank L. Silverman
58-19 262nd Street
Little Neck, N. Y. 11362

A-60-5

Dear Mr. Silverman:

Tax Year Ended	Deficiency	Addition to the Tax For Fraud-Section 6653(b)
December 31, 1961	$ 27,263.68	$13,631.84
December 31, 1962	$ 22,107.44	$11,053.72

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

Form L-21A (Rev. 12-70)

Mr. Frank L. Silverman

FORM 870
(REV. JUNE 1969)
AP:NY:DLK:NS

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the undersigned waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies with interest as provided by law. The undersigned also accepts the following overassessments as correct:

DEFICIENCIES

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	Sec. 6653(b) PENALTY	
December 31, 1961	Income	$27,263.68	$13,631.84	
December 31, 1962	Income	22,107.44	11,053.72	

OVERASSESSMENTS

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY	

NAME AND ADDRESS OF TAXPAYER(S) *(Number, street, city or town, State, ZIP Code)*

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

Signature(s)		
		DATE
		DATE
BY	TITLE	DATE

NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing under section 6511 of the Code a timely claim for refund or credit, on which (if disallowed by the Service) suit may be brought in the appropriate District Court or the U.S. Court of Claims.

If this waiver is for a year for which a JOINT RETURN was filed, it must be signed by both husband and wife unless one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign.

This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.

U.S. GOVERNMENT PRINTING OFFICE : 1969 O—108-233

A-62

FORM [illegible] (REV. MAR. 1970)	INDIVIDUAL INCOME TAX		STATEMENT SCHEDULE
NAME Frank L. Silverman	TAXABLE YEARS ENDED		
	Dec. 31, 1961		Dec. 31, 1962
TAXABLE INCOME ~~OR ADJUSTED GROSS INCOME~~ AS SHOWN IN: ☒ RETURN AS FILED ☐ PRELIMINARY LETTER DATED ☐ STATUTORY NOTICE DATED	4,324.47		5,947.27
INCREASES (DECREASES) IN INCOME: *(See attached explanation of items)*			
(a) Unreported income	44,523.45		35,067.25
(b) Unsubstantiated deductions	6,254.28		4,920.23
TAXABLE INCOME AS REVISED ~~OR ADJUSTED GROSS INCOME AS REVISED~~	55,102.20		45,934.75
TAX COMPUTATION — TAX Married person filing separately-Alternative Tax	28,343.16		23,488.11
TAX SURCHARGE			
TAX PLUS SURCHARGE	28,343.16		23,488.11
LESS: TAX CREDITS Dividends Received Credit	276.10		284.39
SUBTOTAL	28,067.06		23,203.72
ADD: SELF-EMPLOYMENT TAX			
TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT			
TAX LIABILITY	28,067.06		23,203.72
LIABILITY PREVIOUSLY ASSESSED	803.38		1,096.28
DEFICIENCY *(Overassessment)*	27,263.68		22,107.44
Addition to the Tax - Section 6653(b)	13,631.84		11,053.72

BEST COPY AVAILABLE

FORM 3612 (REV. APR. 1959)	INDIVIDUAL ALTERNATIVE TAX COMPUTATION	STATEMENT SCHEDULE

NAME	TAXABLE YEARS ENDED		
Frank L. Silverman	Dec. 31, 1961		Dec. 31, 1962
1. TAXABLE INCOME AS REVISED (STATEMENT SCHEDULE ____________)	55,102.20		45,934.75
2. LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS	9,774.65		1,840.52
3. BALANCE	45,327.55		44,094.23
4. TAX ON AMOUNT ON LINE 3	23,455.84		22,567.85
5. ADD: 50% OF LINE 2	4,887.32		920.26
6. INCOME TAX, ALTERNATIVE METHOD	28,343.16		23,488.11
7. INCOME TAX, REGULAR METHOD	30,646.65		23,803.02

DEPARTMENT OF THE TREASURY • INTERNAL REVENUE SERVICE GPO 874-799 FORM 3612 (REV. 4-

Frank L. Silverman

Explanation of Adjustments

(a) In the absence of adequate records your taxable income for the years 1961 and 1962 is computed by reference to bank deposits and cash payments plus personal and other nondeductible expenditures. Thus your income is increased from unexplained deposits and other unreported income as follows:

Unreported Income	1961	1962
Unexplained Deposits	$21,972.11	$22,449.59
Dividend Income	4,952.73	3,806.93
Interest Income	419.40	248.88
Business Income (Sch. C)	4,204.61	5,957.17
Capital Gains Income	12,717.26	2,404.89
Commission Income	257.34	199.79
Total	$44,523.45	$35,067.25

(b) Deductions claimed for the years 1961 and 1962 are not allowed because it is not established that the amounts disallowed represents ordinary and necessary expenses or were expended for the purposes designated. Your income is increased accordingly.

Unsubstantiated Deductions Disallowed	1961	1962
Business Expenses (Sch. C)	$ 5,125.18	$ 4,139.75
Itemized Deductions	1,029.10	1,280.48
Exemptions Disallowed	600.00	-
Standard Deduction Allowed	(500.00)	(500.00)
Total	$ 6,254.28	$ 4,920.23

A-65

FORM 4089 (REV. MAY 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE STATUTORY NOTICE STATEMENT	SYMBOLS AP:NY:DLK:MS

Mr. Frank L. Silverman
58-19 262nd Street
Little Neck, N. Y. 11362

KIND OF TAX

Income

TAX YEAR ENDED	DEFICIENCY Tax	Addition to the Tax For Fraud-Section 6653(b
December 31, 1961	$27,263.68	$13,631.84
December 31, 1962	22,107.44	11,053.72
	$49,371.12	$24,685.56

It is determined that all or part of the underpayment of tax required to be shown on the returns for the taxable years ended December 31, 1961 and 1962 is due to fraud. Consequently, the 50 per centum addition to the tax provided by section 6653(b) of the Internal Revenue Code of 1954 is asserted for each of those years.

☐ Copy to Authorized Representative:

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket Number 9003-

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency in tax and penalty set forth by the Commissioner of Internal Revenue in his notice of deficiency dated September 15, 1972, and as a basis of this proceeding alleges as follows:

1. The petitioner is an individual residing at 58-19-262nd Street, Little Neck, County of Queens, City and State of New York, and the returns for the periods involved were filed with the Director for the 13th Manhattan District of New York.

2. The notice of deficiency, a copy of which is attached hereto, and marked Exhibit "A" was mailed to the petitioner on or about September 15, 1972.

3. The deficiency assested by the Commissioner of Internal Revenue, are for the taxable years ending December 31, 1961, and December 31, 1962, in the amounts of $27,263.83 and 50% penalty thereon in the amount of $13,631.84 aggregating in all the sum of $40,895.67 for the calendar year ending December 31, 1961, and in the amounts of $22,107.44 and

50% penalty thereon in the amount of $11,053.72, aggregating in all the sum of $33,261.16 for the calendar year ending December 31, 1962, of which approximately $40,395.67 for the calendar year ending December 31, 1961, and approximately $33,261.16 for the calendar year ending December 31, 1962, is in dispute.

4. The determination of the taxes set forth in the notice of deficiency are based upon the following errors.

(a). The Commissioner erred in determining the petitioner's net income for the years herein involved upon the expenditure and investment method, commonly termed the net worth method, rather than by audit of petitioner's books and records and in finding and determining deficiency in income taxes for the calendar years ending December 31, 1961, and December 31, 1962.

(b). Should it be held herein that the Commissioner did not err in determining petitioner's net income upon the net worth method, the Commissioner erred in holding and determining that petitioner realized an increase in net worth for the calendar year ending December 31, 1961, in the amount of $44,523.45, and an increase in net worth for the calendar year ending December 31, 1962, in the amount of $35,067.25 for the calendar year ending December 31, 1962, as set forth in the deficiency notice herein, or in any amounts giving rise to net taxable income in excess of that reported in his income tax returns for the said years.

BEST COPY AVAILABLE

(c). The Commissioner erred in determining that petitioner realized additional dividend income in the amount of $4,952.73 in the taxable year ending December 31, 1961, and $3,806.93 in the taxable year ending December 31, 1962, which allegedly petitioner did not report for Federal Income Tax purposes.

(d). The Commissioner erred in determining that petitioner realized taxable interest income in the amount of $419.40, for the year ending December 31, 1961, and $249.88 for the year ending December 31, 1962, which petitioner allegedly did not report for Federal income tax purposes.

(e). The Commissioner erred in determining that petitioner realized unreported taxable income in the amount of $21,972.11 for the taxable year ending December 31, 1961, and the sum of $22,449.59 in the taxable year ending December 31, 1962, represented by unexplained deposits. Petitioner never realized unreported taxable income in the amount of $21,972.11 for the year ending December 31, 1961, nor the sum of $22,449.59 for the year ending December 31, 1962, as alleged by the Commissioner.

(f). The Commissioner erred in determining that petitioner realized taxable commission income in the amount of $257.34 for the calendar year ending December 31, 1961, and for $199.79 for the calendar year ending December 31, 1962.

(g). The Commissioner erred in determining that petitioner realized capital gains income in the sum of $12,717.26 for the calendar year ending December 31, 1961, and the sum of $2,404.89 for the calendar year ending December 31, 1962.

(h). The Commissioner erred in determining that petitioner realized business income in the amount of $4,204.61 for the calendar year ending December 31, 1961, and for the sum of $5,957.17, for the calendar year ending December 31, 1962, which petitioner allegedly did not report for Federal Income tax purposes.

(i). The Commissioner erred in failing, neglecting and omitting to allow the exemption for the spouse of your petitioner as permitted by Statute for the Calendar year ending December 31, 1961.

(j). The Commissioner erred in determing that the itemized deductions be disallowed in the sum of $1,029.10 for the taxable year ending December 31, 1961, and the sum of $1,280.48 for the taxable year ending December 31, 1962, and in merely allowing the standard deduction of $500.00 for each of the taxable years ending December 31, 1961, and December 31, 1962.

(k). The Commissioner erred in disallowing business deductions (Schedule C), for the taxable year ending December 31, 1961, in the sum of $5,125.18, and for the taxable year ending December 31, 1962, in the sum of $4,139.75.

(l). Petitioner timely filed his income tax returns for the calendar years ending December 31, 1961, and December 31, 1962, and the respondent's determination and assessment of deficiency in income taxes for the taxable years ending December 31, 1961, and December 31, 1962, are barred by the Statute of Limitations provided in Section 6501, et seq. United States Code, Title 26, Internal Revenue Code.

(m). Upon information and belief, that with notice of all the acts of the petitioner set forth in the notice of deficiency dated September 15,1972, the Respondent,Commissioner of Internal Revenue, refrained from sending a notice of deficiency and assessment until the 15th day of September,1972, and has and has thereby been guilty of laches as should in equity bar the Commissioner of Internal Revenue from determining any deficiency for the year involved herein, e.g. 1961 and 1962.

(n). Petitioner was charged by the Respondent,Commissioner of Internal Revenue, with income tax evasion for the taxable years ending December 31,1961,and December 31,1962, and the notice of deficiency and assessment dated the 15th day of September,1972, has placed the petitioner in double jeopardy, and has violated his consitutional rights .

(o). The Commissioner's determination of fraud penalties in the sum of $13,631.84 for the taxable year ending December 31,1961, and fraud penalties in the sum of $11,053.72 for the taxable year ending December 31,1962, pursuant to Section 6653(b) of the Internal Revenue Code is erroneous and should ne dismissed as petitioner was innocent of any fraud in the preparation and filing of his incometax return for the taxable years ending December 31,1961,and December 31,1962, and the burden of proof in respect to the imposition of the 50% penalty is on the Respondent,Commissioner of Internal Revenue.

5. The facts upon which the petitioner relies as a basis of this proceding are as follows:

(a) and (b). The Petitioner, a resident of New York, New York, during the calendar years 1961 and 1962 was employed by the Workmen's Compansation Board of the State of New York,and received wages for the calendar year 1961,in the sum of $9,725.44, and for the calendar year 1962, in the sum of $10,841.11 which amounts have been duly reported in the income tax returns for years 1961 and 1962, and in addition thereto, petitioner conducted an office for the practice of law and has reported all of the income and expenses of such office for the calendar years ending December 31,1961, and December 31,1962. The Commissioner in determining taxable income upon the net worth method has erroneously lumped all deposits,allegedly consisting of bank deposits, and brokers accounts deposits as taxable income, when in fact, such were capital and not taxable income. The petitioner's returns for the years involved reported petitioner's income, and that income so reported constituted the correct taxable net income of the petitioner. Accordingly, the respondent's determination of the petitioner's net income on the net worth method does not reflect petitioner's net income for the years involved, and the respondent's determination on said method is contrary to law. In the event, it is ultimately held that the respondent did not err in determining petitioner's net income on the net method, the respondent's statement in the notice of deficiency asserted herein, or any deficiency is erroneous.

(c). In his notice of deficiency herein, the respondent determined that petitioner realized additional taxable dividend income in the amount of $ 4,952.73 for the taxable year 1961, and additional taxable dividend income in the amount of $3,806.93 for the taxable year 1962, which were not reported for Federal Income Tax purposes. The Commissioner in his statement attached to the notice of decifiency herein has failed to advise petitioner as to the nature or source of this alleged taxable dividend income and the Commissioner is in error, as all dividend income for the years 1961 and 1962 were reported in the returns filed by the petitioner for the years 1961 and 1962.

(d). In his notice of deficiency herein, the respondent, Commissioner, determined that petitioner realized taxable interest income in the amount of $ 419.40 for the taxable year ending December 31,1971, and $248.88 for the taxable year ending December 31,1962, which petitioner allegedly did not report for Federal Income Tax purposes. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioner as to the nature and source of this alleged taxable interest income and the Commissioner is in error as all interest income was reported in the returns filed by the petitioner for the calendar years 1961 and 1962.

(e). In his notice of deficiency herein, the respondent determined that petitioner realized unreported taxable income in the amount of $21,972.11 for the taxable year ending December 31,1961, and the sum of $22,449.59 for the taxable year ending December 3,1962, represented by unexplained deposits. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioner as to the nature or source of these unexplained deposits. The Commissioner is in error in determining that bank deposits are unreported taxable income, when in fact all deposits may represent capital. All taxable income for the years 1961 and 1962 were reported by Petitioner.

(f). In his notice of deficency herein, the respondent determined that petitioner realized taxable commission income in the amount of $257.34 for the calendar year ending December 31,1961, and in the amount of $199.79 for the calendar year ending December 31,1962. In this, the Commissioner is in error as all income was reported by the petitioner for the calendar years 1961 and 1962.

(g). In his notice of deficiency herein,the respondent determined that petitioner realized capital gains income in the sum of $12,717.26 for the taxable year ending December 31,1961, and the sum of $2,404.89 for the taxable year ending December 31,1962. The Commissioner in his statement attached to the notice of deficiency herein, failed to advise petitioner as to the nature and source of these alleged capital gains, and the Commissioner is in error, as all taxable income for the calendar years 1961 and 1962 were reported by the petitioner.

(h). In his notice of deficiency herein, the respondent determined that petitioner realized business income in the amount of $4,204.61, for the calendar year ending December 31,1961, and for the sum of $5,957.17 for the calendar year ending December 31,1962, which petitioner allegedly did not report for Federal Income tax purposes. The Commissioner in his statement attached to the notice of deficiency herein, failed to advise petitioner as to the nature and source of these alleged sums for business for business income, and the Commissioner is in error as all taxable income for the calendar years 1961 and 1962 were reported by the petitioner.

(i). Petitioner in the calendar year 1961, was married and living with his wife. The Commissioner erred in failing, neglecting and omitting to allow an exemption for the spouse of your petitioner for the taxable year ending December 31, 1961.

(j). In his notice of deficiency herein, the respondent determined that the itemized deductions of $1,029.10 for the taxable year ending December 31, 1961, and the itemized deductions of $1,280.48 for the taxable year ending December 31, 1962, be disallowed, and the Commissioner has only allowed the standard deduction in the sum of $500.00 for each of the taxable years in question. In the return filed for the taxable year ending December 31, 1961, your petitioner itemized the following deductions:

Contributions -	$358.00	
Taxes -	661.10	
Total		$1,029.10

In the return filed for the taxable year ending December 31, 1962, petitioner itemized the following deductions:

Contributions -	$604.00	
Taxes	646.48	
New York Retail Sales Tax	30.00	
Total		$1,280.48

The Commissioner is in error in disallowing the aforementioned items, as Petitioner is entitled under the law to these itemized deductions.

(k) In his notice of deficency herein, the respondent determined that the deduction of $5,125.18 claimed for business deductions under Schedule "C" of the return filed by petitioner for the taxable year 1961, be not allowed, and that the deduction of $4,139.75 claimed for business deductions under Schedule "C" of the return filed by the petitioner for the taxable year 1962, be not allowed because in the opinion of the respondent its has not been established that the amounts disallowed represents ordinary and necessary expenses for the purposes designated. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioner the business expenses disallowed. The Commissioner arbitrarily and in error disallowed the necessary business expenses in the conduct of petitioner's business for the taxable years ending December 31,1961, and December 31,1962.

(l). Petitioner timely filed his income tax return for the taxable year ending December 31,1961, and for the taxable year ending December 31,1962, and the respondent's determination and assessment of deficiency in income taxes for the said taxable yeasr are barred by the Statute of Limitations provided in Section 6501 et seq.,United States Code,Title 26, Internal Revenue Code.

(m). The Respondent,Commissioner of Internal Revenue is guilty of laches. The Commissioner with notice of all of the acts of the petitioner set forth in the notice of deficiency dated September 15,1972, refrained from sending a notice of deficiency and assessment until September 15,1972, for deficiency of taxes allegedly due for the taxable years 1961 and 1962, all to the prejudice of the petitioner.

(n). Petitioner was charged by the respondent with income tax evasion as a criminal offense in the United States District Court,Southern District of New York,for the taxavle years ending December 31,1961,and December 31,1962, and the attempted collection of those alleged deficiencies for the taxable yeasr ending December 31,1961,and December 31,1962, has placed your petitioner in doulbe jeopardy and violated his constitutional rights.

(o). The burden of proof in respect of the imposition of 50% penalties being upon respondent, the petitioner makes no allegation in regard thereto, except as stated in Paragraph 4(o) herein.

WHEREFORE, petitioner respectfully prays that this Court may hear this proceding, that it determine that there are no deficiency herein, and to vacate,set aside and declare null and void the determination of the Commissioner of Internal Revenue dated September 15,1972, which fixed the tax deficiency in the sum of $27,273.68 and the fraud penalty of $13,631.84,making a total deficiency in the sum of $40.895.52 for the taxable year ending December 31,1961, and which fixed a tax deficiency in the sum of $22.107.44 and the fraud penalty of $11.053.72,making a total deficiency in the sum of $33,261.16, for the taxable year ending December 31,1962, and the Court grant all proper and just and equitable relief in the premises.

FRANK L.SILVERMAN

FRANK L.SILVERMAN
Attorney for Petitioner-Pro S
Office & P.O.Address
258 Broadway
New Yor,,N.Y.

STATE OF NEW YORK)
COUNTY OF NEW YORK)SS:

FRANK L. SILVERMAN, being duly sworn, deposes and says; that he is the Petitioner above named, and that the foregoing Petition was read by him, and that he is familiar with the statements contained therein, that those statements contained therein, that those statements contained therein are true, except as to those matters stated therein to be upon information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before
me, this 8th day of December, 1972
ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138805
Qualified in Queens County
My Commission Expires Mar. 30, 1973

Frank L. Silverman
FRANK L. SILVERMAN

UNITED STATES TAX COURT

FILED

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FRANK L. SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 9003-72

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1., 2., and 3. Admits the allegations of paragraphs 1, 2, and 3 of the petition.

4. (a). to (o)., inclusive. Denies that the respondent erred as alleged in subparagraphs (a). to (o), inclusive of paragraph 4 of the petition.

5. (a) and (b). Admits that the petitioner, a resident of New York, New York, during the calendar years 1961 and 1962 was employed by the Workmen's Compensation Board of the State of New York, and in addition thereto, petitioner conducted an office for the practice of law. Denies the remaining allegations of subparagraphs (a) and (b). of paragraph 5 of the petition.

(c). Admits that in his notice of deficiency, the respondent determined that petitioner realized additional taxable dividend income in the amount of $4,952.73 for the taxable year 1961 and additional taxable dividend income in the amount of $3,806.93 for the taxable year 1962, which were not reported for Federal Income Tax purposes. Denies the

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remaining allegations of subparagraph (c). of paragraph 5 of the petition.

(d). Admits that in his notice of deficiency, the respondent, Commissioner, determined that petitioner realized taxable interest income in the amount of $419.40 for the taxable year ending December 31, 1961, and $248.88 for the taxable year ending December 31, 1962, which petitioner allegedly did not report for Federal Income Tax purposes. Denies the remaining allegations of subparagraph (d). of paragraph 5 of the petition.

(e). Admits that in his notice of deficiency, the respondent determined that petitioner realized unreported taxable income in the amount of $21,972.11 for the taxable year ending December 31, 1961, and the sum of $22,449.59 for the taxable year ending December 31, 1962, represented by unexplained deposits. Denies the remaining allegations of subparagraph (e). of paragraph 5 of the petition.

(f) Admits that in his notice of deficiency, the respondent determined that petitioner realized taxable commission income in the amount of $257.34 for the calendar year ending December 31, 1961, and in the amount of $199.79 for the calendar year ending December 31, 1962. Denies the remaining allegations of subparagraph (f). of paragraph 5 of the petition.

(g). Admits that in his notice of deficiency, the respondent determined that petitioner realized capital gains income in the sum of $12,717.16 for the taxable year ending December 31, 1961, and the sum of $2,404.89 for the taxable year ending December 31, 1962. Denies the remaining allegations of subparagraph (g). of paragraph 5 of the petition.

(h). Admits that in his notice of deficiency, the respondent determined that petitioner realized business income in the amount of $4,204.61, for the calendar year ending December 31,1961 and for the sum of $5,957.17 for the calendar year ending December 31, 1962, which petitioner allegedly did not report for Federal Income tax purposes. Denies the remaining allegations of subparagraph (h). of paragraph 5 of the petition.

(i). Denies the allegations of subparagraph (i). of paragraph 5 of the petition.

(j). Admits that in his notice of deficiency, the respondent determined that the itemized deductions of $1,029.10 for the taxable year ending December 31, 1961 and the itemized deductions of $1,280.48 for the taxable year ending December 31, 1962, be disallowed, and the Commissioner has only allowed the standard deduction in the sum of $500.00 for each of the taxable years in question. Denies the remaining allegations of subparagraph (j). of paragraph 5 of the petition.

(k). Admits that in his notice of deficiency, the respondent determined that the deduction of $5,125.18 claimed for business deductions under Schedule ""C" of the return filed by petitioner for the taxable year 1961, be not allowed, and that the deduction of $4,139.75 claimed for business deductions under Schedule "C" of the return filed by the petitioner for the taxable year 1962, be not allowed because in the opinion of the respondent it has not been established that the amounts disallowed represents ordinary and necessary expenses for the purposes designated. Denies the remaining allegations of subparagraph (k). of paragraph 5 of the petition.

(l). and (m). Denies the allegations of subparagraphs (l). and (m). of paragraph 5 of the petition.

(n). Admits that petitioner was charged with income tax evasion as a criminal offense in the United States District Court, Sourthern District of New York for the taxable years ending December 31, 1961, and December 31, 1962. Denies the remaining allegations of subparagraph (n). of paragraph 5 of the petition.

(o). Denies the allegations of subparagraph (o). of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

7. FURTHER ANSWERING the petition, and in support of the determination that a part of the underpayments of tax required to be shown in the petitioner's income tax returns for the taxable years 1961 and 1962 are due to fraud the respondent affirmatively relies upon the doctrine of collateral estoppel (estoppel by judgment), and alleges:

(a) Frank L. Silverman, the petitioner herein is the same person who was the defendant in the criminal case of United States v. Frank L. Silverman, (S.D.N.Y. 1970), Docket No. 68 CR 336.

(b) The respondent herein is a party in privity with the United States of America, the prosecuting party in the aforesaid criminal case in which the petitioner herein was the defendant.

(c) The indictment filed on April 10, 1968, in said criminal case sets forth the following charge against the defendant, the petitioner herein:

> "The Grand Jury charges:
>
> "On or about the 15th day of April, 1962 in the Southern District of New York, FRANK L. SILVERMAN, the defendant, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1961, by preparing and causing to be prepared and by filing and causing to be filed with thehe Director of Internal Revenue for the Manhattan District, New York, New York a false and fraudulent income tax return, wherein it

was stated that his taxable income for said calendar year was the sum of $4,324.47, and that the amount of income tax due and owing thereon was the sum of $803.38, whereas, as he then and there well know, his taxable income for the said calendar year was the sum of $26,901.11, upon which taxable income ther was due and owing to the United States of America an income tax of $7,771.37.

(Title 26, United States Code, Section 7201)

SECOND COUNT

The Grand Jury further charges:

On or about the 16th day of March, 1963, in the District of New York, FRANK L. SILVERMAN, the defendant, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1962, by preparing and causing to be prepared and by filing and causing to be filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, a false and fraudulent income tax return wherein it was stated that his taxable income for said calendar year was the sum of $5,947.27, and the amount of income tax due and owing thereon was the sum of $1,096.28, whereas, as he then and there well knew, his taxable income for the said calendar year was the sum of of $18,562.75, upon which taxable income there was due and owing to the United States of America an income tax of $4,506.93."

(Title 26, United States Code, Section 7201)

(d) The petitioner entered a plea of not guilty to the charge set forth against him in said indictment.

(e) On December 10, 1970, after a trial on the merits before a jury, the jury in said case rendered its verdict finding the petitioner guilty of violating the provisions of Int. Rev. Code of 1954, § 7201 as charged in said indictment.

(f) Said United States District Court on April 2, 1971, entered its judgment pursuant to said verdict.

(g) Among the issues of fact presented, litigated and determined in the aforesaid criminal case were whether Frank L. Silverman, the defendant therein, and the petitioner herein, did in fact willfully file false and fraudulent income tax returns for the taxable years 1961 and 1962 with intent to evade and defeat income taxes, and whether he did in fact by such means understate a part of the income taxes due and owing by him to the United States of America for said years.

(h) The petitioner, Frank L. Silverman, as the defendant in said criminal case, presented evidence and argument bearing on the issues of whether he did willfully file false and fraudulent income tax returns for the taxable years 1961 and 1962 with intent to evade and defeat taxes, and whether due to such fraud his correct income tax liabilities were understated in the income tax returns filed by him for said years.

(i) Findings of fact that the petitioner did willfully file false and fraudulent income tax returns for the taxable years 1961 and 1962 with intent to evade and defeat taxes, that there were due to such fraud underpayments of the correct income taxes due and owing by the petitioner for said years were essential to support the jury verdict rendered and the judgment of conviction entered in said case.

(j) One of the issues in the instant case is whether the addition to the tax imposed by Int. Rev. Code of 1954, § 6653(b) should be imposed against the petitioner for the taxable years 1961 and 1962.

(k) Said issue in the instant case is the same as the issue which was presented, litigated and determined adversely to the petitioner in the aforesaid criminal case to the extent that both the imposition of the additions to the taxes against the petitioner for the taxable years 1961 and 1962 under Code, § 6653(b), and said judgment of conviction of the petitioner for violation of Code, § 7201, are each dependent upon findings that the petitioner for said years did in fact file false and fraudulent income tax returns and that by reason of such fraud there are for said years underpayments of income taxes.

(l) The prior criminal conviction of the petitioner under Code, § 7201 for the taxable years 1961 and 1962 is conclusive and binding on the petitioner, and by reason thereof the petitioner is estopped in the instant case, under the doctrine of collateral estoppel (estoppel by judgment), from denying herein that he willfully filed false and fraudulent income tax returns for the taxable years 1961 and 1962 with intent to evade and defeat a part of the income tax due and owing by him for said years, and that due to such fraud there are for said years underpayments of taxes within the meaning of Code, § 6653(b).

(m) By reason of such prior criminal conviction, the petitioner is estopped in the instant case, under the doctrine of collateral estoppel (estoppel by judgment), from denying that a part of the underpayments of income taxes for the taxable years 1961 and 1962 are due to fraud, and that, therefore, the petitioner is liable for the additions to the tax imposed by Int. Rev. Code of 1954, § 6653(b), as determined by the respondent in the statutory notice, upon which notice the instant case is based.

8. STILL FURTHER ANSWERING the petition, and as a defense to the assignment of error that the statute of limitations bars the assessment and collection of the deficiencies in income taxes due from the petitioner for the taxable years 1961 and 1962, the respondent alleges:

(a) The income taxes due from the petitioner for the taxable years 1961 and 1962 may be assessed, or a proceeding in Court for the collection of such tax may be begun without assessment, at any time under the provisions of Code, § 6501(c)(1), since the petitioner filed false or fraudulent income tax returns for said years with intent to evade tax, as is more fully set forth by the facts set forth in paragraph 7, above, which facts are incorporated herein by reference and relied upon by the respondent as a defense to the statute of limitations issue.

WHEREFORE, it is prayed:

(1) That the relief sought in the petition be denied;

(2) That the deficiencies in income taxes for the taxable years 1961 and 1962, as set forth in the statutory notice, be in all respects approved;

(3) That the additions to the taxes for the taxable years 1961 and 1962 under the provisions of Int. Rev. Code of 1954, § 6653(b), as set forth in the statutory notice, be in all respects approved;

(4) That the Court determine that, for the taxable years 1961 and 1962 the petitioner is estopped, under the doctrine of collateral estoppel (estoppel by judgment), from denying his liability for the additions to the taxes imposed by Code, § 6653(b); and

(5) That the Court determine that the assessment and collection of the deficiencies in income taxes for the taxable years 1961 and 1962 are not barred by the statute of limitations.

(Sgd) LEE H. HENKEL, JR. - EHH

LEE H. HENKEL, JR.,
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
MICHAEL A. MENILLO,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,
Petitioner,

v. Docket No. 9003 - 1972.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S REPLY TO THE ANSWER OF THE RESPONDENT.

The Petitioner in reply to the material facts alleged in the answer of the Respondent, respectfully alleges:

1. Admits the allegations in Paragraph 7(a) of the answer of the Respondent.

2. Denies each and every allegation in Paragraph 7(b) of the answer of the Respondent, except that the United States of America, was the prosecuting party in the criminal case, in which the petitioner herein was the defendant.

3. Admits the allegations in Paragraph 7(c) of the answer of the Respondent, and respectfully alleges that in the indictment filed against your petitioner, the United States of America, the prosecuting party alleged that the taxable income for the taxable year 1961, was the sum of $26,901.11, upon which taxable income, there was due and owing to the United States of America, an income tax in the sum of $7,771.37, and the indictment further alleged that for the calendar year, 1961, the petitioner paid the sum of $803.38. In his notice of deficiency for the taxable year 1961, the deficiency asserted by the Respondent for said taxable year is in the

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sum of $27,263.83.

The indictment further alleges in its Second Count, that the taxable income of the petitioner for the taxable year 1962, was the sum of $18,562.75, upon which taxable income there was due and owing to the United States of America, an income tax of $4,506.93, and the indictment further alleged that for said calendar year ending December 31, 1962, petitioner paid the sum of $1,096.28. In his notice of deficiency asserted by the Respondent for the taxable year 1962, the deficiency asserted by the Respondent for the said taxable year is in the sum of $22,107.44.

4. Admits the allegations in Paragraph 7(d) of the answer of the Respondent.

5. Denies each and every allegation in Paragraph 7(e) of the answer of the Respondent, except that after a trial, a jury rendered a verdict of guilty.

6. Admits the allegations in Paragraph 7(f) of the answer of the Respondent.

7. Denies each and every allegation in Paragraph 7(g) of the answer of the Respondent, and respectfully alleges that the issues of fact presented to the jury in the aforesaid criminal case, by the Court in its charge was as follows:

> "There are three elements of this offense, eachof which the Government must prove beyond a reasonable doubt in order to prove the defendant guilty. They are
>
> (1). That an income tax was due and owing from defendant for the year in question which was substantially higher than the tax which he reported and paid.

(2). The defendant attempted in some manner to evade or defeat the tax.

(3). The defendant made that attempt wilfully. To attempt to evade or defeat a tax involves both an intent on the part of the defendant to do so, and an affirmative act wilfully done by defendant in furtherance of that attempt.

8. Denies each and every allegation in Paragraph 7(h) of the answer of the Respondent, except that the Petitioner, Frank L. Silverman, presented evidence on the issues posed by the Court in the criminal proceeding.

9. Denies each and every allegation in Paragraph 7(i) of the answer of the Respondent.

10. Admits the allegations in Paragraph 7(j) of the answer of the Respondent.

11. Denies each and every allegation in Paragraph 7(k) of the answer of the Respondent, and respectfully alleges that the conviction for violation of Section 7201 did not depend upon findings that the petitioner did in fact file false and fraudulent income tax returns for the taxable years in question.

12. Denies each and every allegation in Paragraph 7(l) of the answer of the Respondent, and alleges that the doctrine of collateral estoppel is not applicable herein, as the facts and issues are not the same as in the criminal case.

13. Denies each and every allegation in Paragraph 7(m) of the answer of the Respondent.

14. STILL FURTHER PLEADING TO THE ANSWER OF THE RESPONDENT, petitioner alleges:

(a). Denies each and every allegation

in Paragraph 8(a) of the answer of the Respondent, and respectfully alleges that petitioner filed his income tax return for the taxable year ending December 31, 1961, and for the taxable year ending December 31, 1962, and the respondent's determination and assessment of deficiency in income taxes for the said taxable years are barred by the Statute of Limitations provided in Section 6501, et seq. United States Code, Title 26, Internal Revenue Code.

15. As and for additional matter, the petitioner respectfully alleges:

That by reason of the fact that in the indictmentfiled by the United States of America, in which it was alleged that the income tax for the year ending December 31, 1961, was the sum of $7,771.37, and that the income tax for the year ending December 31, 1962, was the sum of $4,506.93, the Respondent is now collaterly estopped from redetermining the amount of taxes for the calendar years 1961 and 1962.

WHEREFORE, Petitioner respectfully prays:

1. That the relief requested in the petition be granted in all respects, and that the determination of the Commissioner of Internal Revenue, dated, September 15, 1972, be vacated and annulled.

FRANK L. SILVERMAN.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss:

FRANK L. SILVERMAN, being duly sworn, says: That he is the Petitioner above named, and the foregoing reply was read by him, and that he is familiar with the statements contained therein, and that the statements contained therein are true, except as to those matters stated to be upon information and belief, and that as to those matters, he believes it to be true.

Subscribed and sworn to before
me, this 15 day of March, 1973.

Arthur Klein

ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138895
Qualified in Queens County
My commission expires Mar. 30, 1973

Frank L. Silverman
FRANK L. SILVERMAN.

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UNITED STATES TAX COURT

FRANK L. SILVERMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 9003-72
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

AMENDMENT TO ANSWER

THE RESPONDENT, for amendment to the answer filed in the above-entitled case, amends paragraphs 5(c)., 5(e). and 5(g). to read as follows:

5(c). Admits that in his notice of deficiency, the respondent determined that petitioner realized additional taxable dividend income in the amount of $4,952.73 for the taxable year 1961 and additional taxable dividend income in the amount of $3,806.93 for the taxable year 1962, which were not reported for Federal Income Tax purposes. Denies the remaining allegations of subparagraph (c). of paragraph 5 of the petition. Alleges that the following schedule represents the additional taxable dividend income for the taxable years 1961 and 1962:

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Dividends Received

Paying Corporation	1961	1962
Acme Missile & Construction Corp.	$ 30.00	$ .17
American & Foreign Power Cor., Inc.	400.00	484.00
Associated Food Stores, Inc.	71.00	100.00
American Standard	480.00	480.00
Ashland Oil & Refining Co.	52.75	-0-
Atlas Credit Corp.	2.19	-0-
Baldwin-Lima-Hamilton Corp.	540.00	480.00
Braniff Airways, Inc.	150.00	150.00
The Budd Company	45.00	135.00
Charles Pfizer & Co., Inc.	45.00	-0-
Crescent Petroleum Corp.	125.00	375.00
Crucible Steel Co. of America	400.00	400.00
Daitch Crystal Dairies, Inc.	4.00	-0-
Federal Pacific Electric Co.	65.00	-0-
International Telephone & Telegraph	420.00	420.00
Kingston Products Corp.	225.00	300.00
National Malleable & Steel Castings Co.	100.00	150.00
Pan American World Airlines, Inc.	800.00	800.00
Pennsylvania Railroad Co.	100.00	100.00
Pittsburgh Coke & Chemical Co.	210.00	147.00
Republic Pictures Corp.	400.00	400.00
Ronson Corporation	95.10	-0-
Schenley Indurstries, Inc.	432.00	432.00
Sheller Manufacturing Corp.	200.00	200.00
Standard Packaging Corp.	240.00	240.00
Stix, Baer and Fuller Co.	90.00	-0-
Terminal-Hudson Electronics, Inc.	240.00	240.00
Textron	107.19	428.76
United Air Lines, Inc.	7.50	16.00
Universal Marion Corp.	500.00	250.00
The Grand Union Co.	-0-	30.00
Pacific Nutrient & Chemical Co.	-0-	15.00
Sparton Corporation	-0-	60.00
Avnet Electronics Corp.	-0-	-0-
David & Dash, Inc.	-0-	-0-
Merritt Chapman Scott Corp.	-0-	-0-
Amour & Co.	-0-	-0-
Eastern Stainless Steel Corp.	-0-	-0-
Ford Motor Company	-0-	-0-
General Aviline & Film Corp.	-0-	-0-
McCrory Corp.	-0-	-0-
Midland-Ross Corp.	-0-	-0-
Detroit Steel Corporation	216.00	207.00

Paying Corporation	1961	1962
Trust Company of New Jersey	-0-	-0-
Zenith Laboratories, Inc.	-0-	-0-
Abbott Laboratories, Inc.	-0-	-0-
Anglo Lautaro Nitrate	160.00	120.00
Riegel Paper Corp.	-0-	-0-
Alex. Brst & Sons, Inc.	-0-	-0-
Vanadium Corp.	-0-	-0-
Heyden Newport Chemical Corp.	-0-	-0-
Total Dividends	$6,952.73	$7,159.93
Dividends Reported	1,950.00	3,303.00
§116 Dividend exclusion	50.00	50.00
Unreported Dividends	4,952.73	3,806.93

5(e). Admits that in his notice of deficiency, the respondent determined that petitioner realized unreported taxable income in the amount of $21,972.11 for the taxable year ending December 31, 1961, and the sum of $22,449.59 for the taxable year ending December 31, 1962, represented by unexplained deposits. Denies the remaining allegations of subparagraph (e). of paragraph 5 of the petition. Alleges that the following schedule represents the unreported taxable income for the taxable years 1961 and 1962 as represented by unexplained deposits:

ANALYSIS OF DEPOSITS

MERCHANTS BANK OF N.Y.

Source	Regular-Spec.	Regular	Total
1961			
Total Deposits	$23,847.32	$6,271.03	$30,118.35
Eliminations:			
Professional Receipts	$ 8,153.99	$1,125.00	$ 9,278.99
Dividends	1,950.34	1,548.75	3,499.09
Stockbrokers	5,488.20		5,488.20
Total	$15,592.53	$2,673.75	$18,266.28
Unidentified Deposits	$ 8,254.79	$3,597.28	$11,852.07
1962			
Total Deposits	$39,180.85	$2,409.75	$41,590.60
Eliminations:			
Professional Receipts	$23,331.24	$ 500.00	$23,831.24
Dividends	2,098.92	493.75	2,592.67
Salary	1,718.89	871.00	2,589.89
Notes Discounted	2,487.95		2,487.95
Refund of Service Charge	2.00		2.00
Total	$29,639.00	$1,864.75	$31,503.75
Unidentified Deposits	$ 9,541.85	$ 545.00	$10,086.85

ANALYSIS OF DEPOSITS

	East River Savings Bank				Emigrant Industrial Sav.		Chase Manhattan	
							Sav.	
Source	#3,374	#37,218	#65.075	#480,041	#1,551,753	#1,563,763	#14,500	Total
1961								
Total Deposits	$3,373.64	$3,120.03	$7,500.00	$11,285.17	$3,193.13	$706.26	$9,270.07	$38,448.30
Eliminations:								
Salary	$ 905.48			$ 4,119.05			$ 290.87	$ 5,395.40
Dividends				835.20	$ 200.00			1,035.20
Professional Fees			$7,500.00	3,500.00	750.00		1,000.00	12,750.00
Stockbrokers	1,968.16		[illegible]				7,529.50	9,497.66
Total	$2,873.64	-0-	$7,500.00	$ 3,534.25	$ 950.00	-0-	$8,820.37	$28,678.26
Unidentified Deposits	$ 500.00	$3,120.03	-0-	$ 2,750.92	$2,243.13	$706.26	$ 449.70	$ 9,770.04
1962								
Total Deposits	$1,138.55	-0-	-0-	-0-	$2,977.74	$366.13	$15,476.80	$19,959.22
Eliminations:								
Salary							$ 4,862.48	$ 4,862.48
Dividends					$ 613.00		3,122.76	3,735.76
Professional Fees	$1,138.55						500.00	1,638.55
Bank Transfers					930.00			930.00
Notes Collected							205.25	205.25
Total	$1,138.55	-0-	-0-	-0-	$1,543.00	-0-	$ 8,690.49	$11,372.04
Unidentified Deposits	-0-	-0-	-0-	-0-	$1,434.74	$366.13	$ 6,786.31	$ 8,587.18

ANALYSIS OF DEPOSITS

	American Savings Bank		Seamen's Bank	Dry Dock Savings Bank		South Bklyn. Savings	
Source	#289666	#290166	#1435944	#41315	#41316	#606708	Total
1961							
Total Deposits	-0-	-0-	$25.00	$371.51	$2,883.39	$85.00	$3,364.90
Eliminations:							
Salary							
Dividends						$60.00	$ 60.00
Bank Transfers				$371.56	$2,883.39		3,254.90
Total	-0-	-0-	$25.00	$371.56	$2,883.39	$60.00	$3,314.90
Unidentified Deposits	-0-	-0-	$25.00	-0-	-0-	$25.00	$ 50.00
1962							
Total Deposits	$25.00	$25.00	-0-	-0-	-0-	-0-	$ 50.00
Eliminations:							
Salary							
Dividends							
Bank Transfers							
Total	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Unidentified Deposits	$25.00	$25.00	-0-	-0-	-0-	-0-	$ 50.00

ANALYSIS OF DEPOSITS

Source	Burnham & Co. #41840	Cohen, Simonson & Co. #87-11-00343	J.A. Winston Co.	Banner Securities	C.B. Richards & Co.	Linder Bilotti & Co.	S.C. Burns & Co., Inc.	Total
1961								
Total Deposits	$14,456.82	$4.140.25	$9,617.30	$15,208.92	-0-	-0-	-0-	$43.423.29
Eliminations:								
Bank Transfers	$14,456.82	$2,531.50	$2,816.30	$11,608.92	-0-	-0-	-0-	$31,413.54
Other Brokers		1,608.75	6,501.00	3,600.00				11,709.75
Total	$14,456.82	$4,140.25	$9.317.30	$15,208.92	-0-	-0-	-0-	$43,123.29
Unidentified Deposits	-0-	-0-	$ 300.00	-0-	-0-	-0-	-0-	$ 300.00
1962								
Total Deposits	-0-	$2,104.14	-0-	$ 8,175.44	$12,601.68	$3,200.00	$ 900.00	$26,981.26
Eliminations:								
Bank Transfers		$2,104.14	-0-	$ 5,949.88	$12,601.68	$1,700.00	$ 900.00	$23,255.70
Total	-0-	$2,104.14	-0-	$ 5,949.88	$12,601.68	$1,700.00	$ 900.00	$23,255.70
Unidentified Deposits	-0-	-0-	-0-	$ 2,225.56	-0-	$1,500.00	-0-	$ 3,725.56

5(g). Admits that in his notice of deficiency, the respondent determined that petitioner realized capital gains income in the sum of $12,717.16 for the taxable year ending December 31, 1961, and the sum of $2,404.89 for the taxable year ending December 31, 1962. Denies the remaining allegations of subparagraph (g). of paragraph 5 of the petition. Alleges that the following schedule represents the unreported capital gain for the taxable years 1961 and 1962:

SCHEDULE OF CAPITAL GAINS AND LOSSES

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Shares	Security	Date Acquired	Cost	Date Sold	Selling Price	Short Term Gain (or Loss)	Long Term Gain (or Loss)
1961							
500	Speedway Food Stores, Inc.	6-28-60	$1,000.00	4-5-61	$1,326.94		$ 326.94
100	Stix, Baer & Fuller, Inc.	7-30-59	2,431.00	10-17-61	3,060.19		629.19
100	Charles Pfizer & Co., Inc	7-28-59	3,925.94	11-1-61	4,502.35		576.41
1,000	General Aluminum Fabricators	2-24-60 4-15-60	4,000.00	2-17-61	4,500.00		500.00
204	Donbar Development Corp.	11-28-60	1,000.00	9-22-61	4,080.00		3,080.00
200	Industrial Rayon Corp.	7-19-60	2,867.26	1-3-61	3,936.32	$ 969.06	
1,200	Atlas Credit Corp. - B	8-18-58 9-15-58 9-30-58	3,000.00	1-20-61	9,392.16		6,392.16
548	Atlas Credit Corp. - B	10-14-58	1,750.00	2-1-61	4,287.60		2,537.60
100	Atlas Credit Corp. - A	9-30-58	280.60	2-2-61	807.43		526.83
211	Ashland Oil & Refining Co., Inc.	3-10-59	4,122.78	3-2-61	5,298.33		1,175.55
213	Ronson Corporation	4-16-56 1-11-57 2-15-61	1,851.44	9-19-61	4,898.81		3,047.37
100	Industrial Rayon Corp.	7-19-60	1,433.63	5-2-61	1,968.16		534.53
200	Dayton Rubber Co.	10-20-60	3,006.13	3-13-61	3,936.32	930.19	
300	Allied Petro-Products	3-22-61	600.00	5-10-61	1,643.36	1,043.36	
100	Swimming Pool Development Co., Inc.	7-28-60	500.00	4-28-61	722.72		222.72
						$2,942.61	$19,549.30

LTCG	$19,549.30
STCG	2,942.61
	$22,491.91
1/2 LTCG	9,774.65
Adj.	$12,717.26

SCHEDULE OF CAPITAL GAINS AND LOSSES

Shares	Security	Date Acquired	Cost	Date Sold	Selling Price	Short Term Gain (or Loss)	Long Term Gain (or Loss)
1962							
200	Authenticolor, Inc.	1-18-62	$ 650.00	7-13-62	$ 836.43	$186.43	
1,000	Hapman Corporation	3-30-61	2,750.00	2-28-62	2,244.12		$ (455.88)
200	Atlas Credit Corp. - B	9-30-58	561.20	4-12-62	4,698.12		4,136.92
						$186.43	$3,681.04

LTCG	$3,681.04	Corrected	$2,026.95
STCG	186.43	Reported	(377.94)
	$3,867.47	Adj.	$2,404.89
1/2 LTCG	1,840.52		
	$2,026.95		

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WHEREFORE, the respondent prays that the Court grant the prayer requested in his original answer.

(Sgd) LAWRENCE B. GIBBS - CCMJr.

LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
MICHAEL A. MENILLO,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

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4420002490

FORM 1040
U.S. Treasury Department
Internal Revenue Service

U.S. INDIVIDUAL INCOME TAX RETURN—1963

or taxable year beginning January 1st, 1963, ending December 31, 1963

Your social security number: 134 | 30 | 156

Occupation

First name and initial: Frank L. & Anna
Last name: Silverman
If joint return of husband and wife, use first names and middle initials of both

Home address: 316 East 8th Street
Number and street or rural route

New York 9, N.Y.
City, town or post office, and State — Postal ZIP code

Wife's number if joint return
Occupation

Print or Type

Did you file a return for 1962? ☒ Yes ☐ No. If name or address was different than shown above, enter name and address used.

Check one: ☐ Single ☐ Married filing joint return (even if only one had income) ☐ Unmarried Head of Household ☐ Surviving widow(er) with dependent child ☐ Married filing separately — *Give name of wife or husband only if also filing separately*

If joint return, include all income of both husband and wife—INCOME—If either you or your wife worked for more than one employer, see page 4 of instructions.

	(a) Federal income tax withheld	(b) Wages, etc.
1. Wages, salaries, tips, etc., and excess of allowances over business expenses: Employer's name — Where employed (city and state): State of New York, Gov. Alfred E. Smith Blding, Albany, New York	$ 1852.52	$ 11643.83
2. Totals	1852.52	11643.83
3. "Sick pay" if included in line 1 (attach required statement)		
4. Subtract line 3 from line 2		
5a. Dividends (Schedule B)		3953.50
b. Interest (Schedule B or list of payers and amounts)		
c. Rents, royalties, pensions, etc. (Schedule B)		
6a. Business income (Schedule C) Schedule attached		(4131.71)
b. Sale or exchange of property (Schedule D)		47.66
c. Farm income (Schedule F)		
7. Total (add lines 4 through 6c)		11513.30
8. Payments by self employed persons to retirement plans, etc. (attach Form 2950 SE)		
9. Total income (subtract line 8 from line 7)		11513.30

10. Tax Table — FIGURE YOUR TAX BY USING EITHER 10 OR 11 — 11. Tax Rate Schedule

10. Tax Table:
- If line 9 is less than $5,000 and you do not itemize deductions;
- Complete page 2 exemption schedule.
- Copy total exemptions here 2
- Find your tax in table on page 10 of instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.

11a. If you itemize deductions, enter total from page 2. If line 9 is $5,000 or more and you do not itemize, enter 10% of line 9 but not more than $1,000 (*$500 if married and filing separate return*)		1440.75
b. Subtract line 11a from line 9		10072.55
c. Copy total exemptions from page 2 here 2, multiply by $600		1200.00
d. Subtract line 11c from line 11b. (Figure your tax on this amount by using tax rate schedule on page 9 of instructions and enter tax on line 12.)		8872.55

TAX—CREDITS—PAYMENTS

12. Tax (from either tax table or tax rate schedule)		1906.72 [illegible]
13a. Dividends received credit	158.02	
b. Retirement income credit		
c. Investment credit (Form 3468)		
d. Other credits (Specify—see page 5 of instructions)		
e. Total (add lines 13a, b, c, and d)		158.02
14. Balance (subtract line 13e from line 12)		1748.70
15. Tax from recomputing prior year investment credit (attach statement)		
16. Total (add lines 14 and 15)		
17. Self-employment tax (Schedule C-3 or F-1)		
18. Total tax (add lines 16 and 17)		1852.52
19a. Tax withheld (line 2, column (a) above)	1852.52	
b. 1963 Estimated tax payments and credits (Office where paid)		
c. Total (add lines 19a and b)		103.52

TAX DUE OR REFUND

20. If payments (line 19c) are less than tax (line 18), enter Balance Due. Pay in full with this return.	
21. If payments (line 19c) are larger than tax (line 18), enter Overpayment	103.53
22. Amount of line 21 you wish credited to 1964 Estimated Tax	
23. Subtract line 22 from 21. Apply to: ☐ U.S. Savings Bonds, with excess refunded; or ☒ Refund only	103.53

4-D

★ LIST YOUR EXEMPTIONS AND SIGN ON OTHER SIDE

Attach Copy B of Forms W-2 Here

Attach Check or Money Order Here

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SCHEDULE A.—EXEMPTIONS (See page 6 of instructions)

1. Exemptions for yourself—and wife (only if all her income is included in this return, or she had no income)

Check boxes which apply.
(a) Regular $600 exemption . . . . ☒ Yourself ☒ Wife
(b) Additional $600 exemption if 65 or over at end of 1963 . . . . ☐ Yourself ☐ Wife
(c) Additional $600 exemption if blind at end of 1963 . . . . ☐ Yourself ☐ Wife
Enter number of boxes checked → 2

2. Exemptions for your children and other dependents (list below)
- If an exemption is based on a multiple-support agreement of a group of persons, attach the declarations described on page 6 of instructions.

NAME Enter figure 1 in the last column to right for each name listed (Give address if different from yours)	Relationship	ANSWER ONLY FOR DEPENDENTS OTHER THAN YOUR CHILDREN				
		Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have income of $600 or more?	Amount YOU furnished for dependent's support. If 100% write "ALL"	Amount furnished by OTHERS including dependent	
				$	$	→
						→
						→
						→
						→
						→
						→

3. Total exemptions (lines 1 and 2 above). (Enter here and on line 10 or 11c, page 1) . . . . → 2

ITEMIZED DEDUCTIONS—If you do not use tax table or standard deduction

If husband and wife (not legally separated) file separate returns and one itemizes deductions, the other must also itemize
If necessary, write more than one item on a line or attach additional sheets. Put name and address on all attachments.

Contributions If other than money, attach required statement—see *instructions*	Mahopac Temple, Mahopac, N.Y.	171.00
	Sadie Koenig Aid Society, New York, N.Y.	78.00
	Fed. Rep. Club, New York 9, N.Y. Con.	100.00
	Red Cross, Heart Fund, Cancer, etc.	100.00
	Salvation Army, March of Dimes, etc., New York, N.Y.	100.00
	East Side Hebrew Institute, New York, N.Y.	100.00
	Total (not to exceed 20% of line 9, page 1, except as described on page 7 of instructions) →	$ 649.00
Interest expense	Home mortgage	
	Other interest expense (specify)	
	Total interest →	~~731.75~~
Taxes	Real estate taxes 219.67 State income taxes 167.36	
	State and local sales taxes 244.72 Other taxes (specify) 100.00	
	Mahopac Point Owners Association	
	Total taxes →	731.75
Medical and dental expense Attach itemized list. Do not enter any expense compensated by insurance or otherwise	NOTE: If you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of Instructions for possible larger deduction.	
	1. Total cost of medicine and drugs . . . . . . $	
	2. Enter 1% of line 9, page 1	
	3. Subtract line 2 from line 1	
	4. Other medical, dental expenses (include hospital insurance premiums)	
	5. Total (add lines 3 and 4)	
	6. Enter 3% of line 9, page 1 (see note above) . . . . $	
	7. Subtract line 6 from line 5; see page 8 of instructions for maximum limitation . . .	
Other deductions See page 8 of instructions	New York City Retail Sales Taxes	60.00
	Total other deductions →	1410.75
	Total itemized deductions (Enter here and on line 11a, page 1) . . . . →	$ 1440.75

EXPENSE ACCOUNT INFORMATION
Did you receive an expense allowance or reimbursement, or charge expenses to your employer? . ☐ Yes ☒ No
If "Yes," did you submit itemized accounting of all such expenses to your employer? . . . . . ☐ Yes ☒ No
See page 4, instructions.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here 4/8/64
Taxpayer's signature and date
If joint return, BOTH HUSBAND AND WIFE MUST SIGN
Wife's signature and date 4/8/64

Sign here
Signature of preparer other than taxpayer
Address
Date

☆☆☆ GPO: 1963—O-690-681

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SCHEDULE B
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

SUPPLEMENTAL SCHEDULE OF INCOME AND CREDITS

(From all sources other than wages, business, farming, and sale or exchange of property)

Attach this schedule to your income tax return, Form 1040

1963

Name and address as shown on page 1 of Form 1040

Frank L. and Anna Silverman, 316 E. 8th Street, New York, N.Y.

Part I.—DIVIDEND INCOME (Income from savings (building) and loan associations and credit unions should be entered as interest in Part II)

1. Name of qualifying corporation declaring dividend (more than one entry may be made on a line) (Indicate by (H), (W), (J) whether stock is held by husband, wife, or jointly)

						AMOUNT
		Pitts Coke & Chem.	84.00	*National Cast.	220	
Budd Mfg.	$157.50	*Am. Foreign Power	$512.00	*Anglo-Litoro	210	
Pan Am.	$800.00*	Sheller Mfg. Corp.	200.00	*Am. Radiator	420.	
Det. Steel	180.00*	Pa RR. Co.	200.00	*Braniff Air	250.	
Crucible	400.00*	Universal Marion	250.00	*Sparton Corp	120	
2. Total	$1537.50		$1246.00		1220	4003.50

3. Exclusion of $50 (If both husband and wife received dividends, each is entitled to exclude not more than $50 of his (her) own dividends) — 50.00
4. Subtract line 3 from line 2. Enter here and on line 1, Part VII — 3953.50
5. Name of nonqualifying corporation declaring dividend: Controlled foreign corporations (attach Form 3646)
6. Total (add lines 4 and 5). Enter here and on line 5a, page 1, Form 1040

Part II.—INTEREST INCOME (This includes interest credited to your account)

Note: A separate attachment may be used if interest is the only income to be reported on this schedule.

AMOUNT

1. Name of payer (more than one entry may be made on a line)
2. Total—Enter here and on line 5b, page 1, Form 1040

Part III.—PENSION AND ANNUITY INCOME

A.—General Rule (If you did not contribute to the cost of the pension or annuity, enter the total amount received on line 6 and omit lines 1 through 5.)

AMOUNT

1. Investment in contract
2. Expected return
3. Percentage of income to be excluded (line 1 divided by line 2) %
4. Amount received this year
5. Amount excludable (line 4 multiplied by line 3)
6. Taxable portion (excess of line 4 over line 5)

B.—Special Rule—Where your employer has contributed part of the cost and your own contribution will be recovered tax-free within 3 years. If your cost was fully recovered in prior years, enter the total amount received on line 5 and omit lines 1 through 4.

1. Cost of annuity (amounts you paid)
2. Cost received tax-free in past years
3. Remainder of cost (line 1 less line 2)
4. Amount received this year
5. Taxable portion (excess, if any, of line 4 over line 3)

Part IV.—RENT AND ROYALTY INCOME

1. Kind and location of property (Identify whether rent or royalty)	2. Total amount of rents or royalties	3. Depreciation (explain in Part VI) or depletion	4. Repairs (attach itemized list)	5. Other expenses (attach itemized list)
1. Totals				

2. Net income (or loss) from rents and royalties (column 2 less sum of columns 3, 4, and 5)

Part V.—OTHER INCOME OR LOSSES

1. Partnerships (name, address, and nature of income)
2. Estates or trusts (name and address)
3. Other sources (state nature)

Total of Parts III, IV, and V (Enter here and on line 5c, page 1, of Form 1040)

Dec. 31st 1965 US Treasury Department—Internal Revenue Service

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Part VI.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN PART IV

—This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62–21 as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
Total cost or other basis....							

1. Total depreciation..........
2. Amount of additional first-year depreciation included above..........
3. Cost or other basis of fully depreciated assets still in use..........

Part VII.—DIVIDENDS RECEIVED CREDIT

1. Amount of dividends on line 4, Part I..........
2. Tentative credit (4% of line 1)..........
3. Tax shown on line 12, page 1 of Form 1040, less amount, if any, of credit for foreign taxes..........
4. 4% of taxable income (see below)..........

Taxable Income Means
(a) If tax is computed, the amount shown on line 11d, page 1 of Form 1040.
(b) If Tax Table is used, the amount shown on line 9, page 1 of Form 1040, less 10% thereof, and less the deduction for exemptions ($600 multiplied by the number of exemptions claimed on line 3, Schedule A, page 2 of Form 1040).

5. Credit. Enter here and on line 13(a), Form 1040, the smallest of the amounts on line 2, 3, or 4, above....

Part VIII.—RETIREMENT INCOME CREDIT

This credit does not apply
1. If you received pensions or annuities of $1,524 or more from Social Security or Railroad Retirement;
2. If you are under 62 years of age and had "earned income" of $2,424 or more; OR
3. If you are 62 or over and under 72, and had "earned income" of $2,974 or more.

	A	B
If separate return, use column B only. If joint return, use column A for wife and column B for husband——→		
Did you receive earned income in excess of $600 in each of any 10 calendar years before the taxable year 1963? (Widows or widowers see instructions, page B-4)..........	☐ Yes ☐ No	☐ Yes ☐ No
If answer above is "Yes" in either column, furnish all information below in that column.		
1. Retirement income for taxable year:		
(a) For taxpayers under 65 years of age: Enter only income received from pensions and annuities under public retirement systems (e.g. Fed., State Govts., etc.) and included in line 9, page 1, of Form 1040.		
(b) For taxpayers 65 years of age or older: Enter total of pensions and annuities, interest, and dividends included in line 9, page 1 of Form 1040, and gross rents included in column 2, Part IV of this schedule....		
2. Maximum amount of retirement income for credit computation..........	1,524 00	1,524 00
3. Deduct:		
(a) Amounts received in taxable year as pensions or annuities under the Social Security Act, the Railroad Retirement Acts, and certain other exclusions from gross income.		
(b) Earned income received in taxable year (Does not apply to persons 72 years of age or over):		
(1) Taxpayers under 62 years of age, enter amount in excess of $900..........		
(2) Taxpayers 62 or over but under 72, enter amount determined as follows: if $1,200 or less, enter zero..........; if over $1,200 but not over $1,700, enter 1/2 of amount over $1,200; or if over $1,700, enter excess over $1,450..........		
4. Total of lines 3(a) and 3(b)..........		
5. Balance (line 2 minus line 4)..........		
6. Line 5 or line 1, whichever is smaller..........		
7. Tentative credit (20% of line 6)..........		

8. Total tentative credit (total of amounts on line 7, columns A and B)..........

LIMITATION ON RETIREMENT INCOME CREDIT

9. Amount of tax shown on line 12, page 1 of Form 1040..........
10. Less: Total of any amounts shown on lines 13(a) and 13(d), page 1, Form 1040..........
11. Subtract line 10 from line 9..........
12. Credit. Enter here and on line 13(b), Form 1040, the amount on line 8 or line 11, whichever is smaller...

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F.L.Silverman 12 1668857,
280 Broadway
New York 7, N.Y.

Type or print EMPLOYER'S identification number, name, and address above.

WITHHOLDING TAX STATEMENT 1963
Federal taxes withheld from wages

Copy A—For District Director

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ None.	$	$ None.	$ 2005.00	
F.I.C.A. employee tax withheld, if any	Total F.I.C.A. wages paid in 1963	Federal income tax withheld, if any	Total wages* paid in 1963	

Morris Schaeffer
28-09 Seagirt Boulevard
Far Rockaway, N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

EMPLOYER: Please note that the tax and wage boxes are arranged in a different order than in past years. This will tie in with an improvement to be made in 1963 income tax return forms.

For instructions on preparing Form W-2, see other side.

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared ....

FORM W-2—U.S. Treasury Department, Internal Revenue Service

*Before payroll deductions or "sick pay" exclusion.

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SCHEDULE C
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1963

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040
FRANK L. SILVERMAN and ANNA SILVERMAN, 316 E. 8 n St., NYC.

A. Principal business activity Lawyer
(See separate instructions) (For example: retail—grocer, wholesale—tobacco, services—legal, manufacturing—furniture, etc.)

B. Business name FRANK L. SILVERMAN C. Employer Identification Number

D. Business location 280 Broadway, New York 7, N.Y.
(Number and street or rural route) (City or post office) (State)

E. Indicate method of accounting: ☒ cash; ☐ accrual; ☐ other. F. Did you file Employer Quarterly Tax Return, Form 941, for any quarter of 1963? ☐ Yes ☒ No. G. Is this business within legal boundaries of city shown on line D? ☒ Yes ☐ No.

H. Did you own this business on December 31, 1963? ☒ Yes ☐ No. I. How many months in 1963 did you own this business? 12

1. Gross receipts or gross sales $ 3210.50 Less: Returns and allowances $		$ 3210.50
2. Inventory at beginning of year (If different than last year's closing inventory attach explanation)		
3. Merchandise purchased $, less cost of any items withdrawn from business for personal use $		
4. Cost of labor (do not include salary paid to yourself)	2005.00	
5. Material and supplies		
6. Other costs (explain in Schedule C-1)		
7. Total of lines 2 through 6		
8. Inventory at end of this year		
9. Cost of goods sold (line 7 less line 8)		2005.00
10. Gross profit (subtract line 9 from line 1)		1205.50

OTHER BUSINESS DEDUCTIONS

11. Depreciation (explain in Schedule C-2) Schedual attached.	2255.13	
12. Taxes on business and business property (explain in Schedule C-1)		
13. Rent on business property	1250.0[illegible]	
14. Repairs (explain in Schedule C-1)		
15. Salaries and wages not included on line 4 (exclude any paid to yourself)		
16. Insurance		
17. Legal and professional fees		
18. Commissions		
19. Amortization (attach statement)		
20. Retirement plans, etc. (other than your share—see instructions)		
21. Interest on business indebtedness		
22. Bad debts arising from sales or services		
23. Losses of business property (attach statement)		
24. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
25. Other business expenses (explain in Schedule C-1) Schedule Attached	[illegible].50	
26. Total of lines 11 through 25		5337.21
27. Net profit (or loss) (subtract line 26 from line 10). Enter here; on line 1, Schedule C-3; and on line 6a, page 1, Form 1040		Loss (4131.71)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, 25 ... Loss (4131.71)

Line No.	Explanation	Amount	Line No.	Explanation	Amount
See	Schedule attached.	$			$

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62-21 as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1. Totals							

2. Less: Amount of depreciation claimed elsewhere in Schedule C ....
3. Balance—Enter here and on line 11, page 1 ....
4. Amount of additional first-year depreciation included above ....
5. Cost or other basis of fully depreciated assets still in use ....

INVENTORY QUESTIONS

1. Was inventory valued at—Cost ☐; lower of cost or market ☐; other ☐. If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☐ No ☐. If "Yes," were the write-downs computed on the basis of:
   - (a) ☐ Percentage reductions from parts of the inventory
   - (b) ☐ Percentage reductions from the total inventory
   - (c) ☐ Valuation of individual items.

   If "a" or "b" is checked, enter th [illegible] centage of write-downs ....%. For "a," "b," or "c" enter the dollar amount of write-downs $..............

   (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year?
   Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☐. If "Yes," attach explanation.

NOTE: If a direct answer cannot be given to a question, attach explanation.

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and Wages
Owner........		XXXXXXXXXXXXXX
1.		
2.		
3.		
4.		
5.		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicabl boxes within that question.)

F. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

G. Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

H. The leasing, renting, or ownership of a hotel roo or suite ☐, apartment ☐, or other dwelling ☐ which was used by you, your customers, employees or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

I. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

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SCHEDULE D (Form 1040)	U.S. Treasury Department - Internal Revenue Service **GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY** Attach this schedule to your income tax return, Form 1040	1963

Name and address as shown on page 1 of Form 1040

Frank L. and Anna Silverman-316 E. 8th Street, New York, N.Y.

Part I—CAPITAL ASSETS

Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1.						

2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
3. Enter unused capital loss carryover from 5 preceding taxable years (attach statement)
4. Net short-term gain (or loss) from lines 1, 2, and 3

Long-term capital gains and losses—assets held more than 6 months

5. Enter gain from line 3, Part II

a.	b.	c.	d.	e.	f.	g.
12/8/55 & 1/27/56 Acquired		11/14/63-	18.50	share	25.27 share	
125 shares			2312.50		3158.75	(846.25)
	3/10/59	10/11/63-	5700.00		4758.39	941.61

Total long-term gross sales price . .

6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries	95.36
7. Capital gain dividends	
8. Net long-term gain (or loss) from lines 5, 6, and 7	95.36
9. Combine the amounts shown on lines 4 and 8, and enter the net gain (or loss) here	
10a. If line 9 shows a GAIN—Enter 50% of line 8 or 50% of line 9, whichever is smaller. (Enter zero if there is a loss or no entry on line 8.) (See reverse side for computation of alternative tax)	47.68
b. Subtract line 10a from line 9	47.68
11. If line 9 shows a LOSS—Enter here the smallest of the following: (a) the amount on line 9; (b) the amount on line 11b, page 1 of Form 1040 computed without regard to capital gains and losses; or (c) $1,000	

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTION 1245

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1.				

f. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h)	j. Other gain (h less i)
f-1. Prior to January 1, 1962	f-2. After December 31, 1961				

2. Total ordinary gain. Enter here and on line 3, Part IV
3. Total other gain. Enter here and on line 5, Part I; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j on line 1, Part III. .

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Part III—PROPERTY OTHER THAN CAPITAL ASSETS

a. Kind of property (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1. Enter gain from line 3, Part II						
2. Enter your share of non-capital gain (or loss) from partnerships and fiduciaries						
3. Net gain (or loss) from lines 1 and 2. Enter here and on line 2, Part IV						

Part IV—TOTAL GAINS OR LOSSES FROM SALE OR EXCHANGE OF PROPERTY

1. Net gain (or loss) from either line 10b or 11, Part I
2. Net gain (or loss) from line 3, Part III
3. Total ordinary gain from line 2, Part II
4. Total net gain (or loss), combine lines 1, 2, and 3. Enter here and on line 6b page 1 of Form 1040

COMPUTATION OF ALTERNATIVE TAX

It will usually be to your advantage to use the alternative tax if the net long-term capital gain exceeds the net short-term capital loss, or if there is a net long-term capital gain only, and you are filing (a) a separate return with taxable income exceeding $18,000, or (b) a joint return, or as a surviving husband or wife, with taxable income exceeding $36,000, or (c) as a head of household with taxable income exceeding $24,000.

1. Enter the amount from line 11d, page 1 of Form 1040
2. Enter amount from line 10a, Part I on reverse side
3. Subtract line 2 from line 1
4. Enter tax on amount on line 3 (use applicable tax rate schedule on page 9 of Form 1040 instructions)
5. Enter 50% of line 2
6. Alternative tax (add lines 4 and 5). If smaller than the tax figured on the amount on line 11d, page 1 of Form 1040, enter this alternative tax on line 12, page 1 of Form 1040

INSTRUCTIONS—(References are to the Internal Revenue Code)

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY.—Report details in schedule on other side.

"Capital assets" defined.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business) but does NOT include—

- (a) stock in trade or other property of a kind properly includible in his inventory if on hand at the close of the taxable year;
- (b) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
- (c) property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167;
- (d) real property used in the trade or business of the taxpayer;
- (e) certain government obligations issued on or after March 1, 1941, at a discount, payable without interest and maturing at a fixed date not exceeding one year from date of issue;
- (f) certain copyrights, literary, musical, or artistic compositions, etc.; or
- (g) accounts and notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property referred to in (a) or (b) above.

Special rules apply to dealers in securities for determining capital gain or ordinary loss on the sale or exchange of securities. Certain real property subdivided for sale may be treated as capital assets. Sections 1236 and 1237.

If the total distributions to which an employee is entitled under an employees' pension, bonus, or profit-sharing trust plan, which is exempt from tax under section 501(a), are paid to the employee in one taxable year, on account of the employee's separation from service, the aggregate amount of such distribution, to the extent it exceeds the amounts contributed by the employee, shall be treated as a long-term capital gain. (See section 402(a).)

Gain on sale of depreciable property between husband and wife or between a shareholder and a "controlled corporation" shall be treated as ordinary gain.

Gains and losses from transactions described in section 1231 (see below) shall be treated as gains and losses from the sale or exchange of capital assets held for more than 6 months if the total of these gains exceeds the total of these losses. If the total of these gains does not exceed the total of these losses, such gains and losses shall not be treated as gains and losses from the sale or exchange of capital assets. Thus, in the event of a net gain, all these transactions should be entered in Part I of Schedule D. In the event of a net loss, all these transactions should be entered in Part III of Schedule D, or in other applicable schedules on Form 1040.

Section 1231 deals with gains and losses arising from—

- (a) sale, exchange, or involuntary conversion, of land (including in certain cases unharvested crops sold with the land) and depreciable property if they are used in the trade or business and held for more than 6 months,
- (b) sale, exchange, or involuntary conversion of livestock held for draft, breeding, or dairy purposes (but not including poultry) and held for 1 year or more,
- (c) the cutting of timber or the disposal of timber or coal to which section 631 applies, and
- (d) the involuntary conversion of capital assets held more than 6 months.

See sections 1231 and 631 for specific conditions applicable.

Gains from section 1245 property (Part II).—Use this part to report any gain from the disposition of depreciable (a) personal property (other than livestock) including intangible personal property; and (b) tangible real property (except for buildings and their structural components) if used as an integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or used as a research or storage facility in connection with these activities.

See section 1245 (b) for exceptions and limitations involving: (a) disposition by gift; (b) transfers at death; (c) certain tax-free transactions; (d) like kind exchanges, involuntary conversions; (e) sales or exchanges to effectuate FCC policies and exchanges to comply with S.E.C. orders; and (f) property distributed by a partnership to a partner.

Basis.—In determining gain or loss in case of property acquired after February 28, 1913, use cost, except as specially provided. The cost or other basis of property which qualifies for the investment credit must be reduced by an amount equal to 7 percent of the qualified investment whether the credit is taken or not. The basis of property acquired by gift after December 31, 1920, is the cost or other basis to the donor in the event of gain, but, in the event of loss, it is the lower of either such donor's basis or the fair market value on date of gift. If a gift tax was paid with respect to property

(Instructions continued on reverse side of duplicate)

BEST COPY AVAILABLE

Schedule C-2, Line 11

Insurance, Liab.etc.,	$190.56
Garage, etc.,	324.00
Repairs of car	171.22
Wash & Simonize	115.00
Gas & Oil	428.15
N.Y.State Plates	26.25
Tolls,	55.00
Misc.services	75.00
Motor Parking, etc.,	120.00
Misc.replacements, etc.,	250.00
Depreciation of office furniture	500.00 **
Total	$2255.18

1960 Purchase of office furniture.

One Office Sofa	$183.75
Office Desk and Chair	285.00
Four Office Chairs	100.00
One Office Desk	154.00
One Air Conditioner	300.57
Office Typewriter	118.45
Miscellaneous office equipment	109.48
Total	$1250.00
Balance of Depreciation	500.00 **

Schedule C-1. Line 25:

N.Y.County Lawyers Association	$35.00
U.S.Postage, etc.,	175.00
Telanserphone service	141.00
Stationery & Printing	235.00
N.Y.Telephone Co.	303.99
Repairs, etc.,	65.00
Process server	147.00
Hotel Accommoadtions	75.00
Petty Cash	75.00
Photo exhibits	105.00
Entertainment of clients, etc.,	350.00
Magazines, etc.,	125.00
Total	$1831.99

Form 1040
U.S. Treasury Department
Internal Revenue Service

A-114

U.S. INDIVIDUAL INCOME TAX RETURN--1964

or taxable year beginning January 1, 1964, ending December 31, 19 64

Your social security number (husband's if joint return): 124 | 20 | 8156

Occupation:

Please Print or Type

First name and initial (if joint return, use first names and middle initials of both): Frank L. and Anna
Last name: Silverman
Home address (Number and street or rural route): 316 East 8th Street
City, town or post office, and State: New York, N.Y. 10009
Postal ZIP code:

Wife's number, if joint return:

Occupation:

Enter the name and address used on your return for 1963 (if the same as above, write "Same"). If none filed, give reason.

NOTE.—Married taxpayers: If you are changing from filing separate returns to a joint return or from a joint return to separate returns, enter names and addresses from the 1963 joint or separate returns.

See instructions before completing your return.

FILING STATUS—check one:

1a. ☐ Single
b. ☒ Married filing joint return (even if only one had income)
c. ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.
d. ☐ Unmarried Head of Household
e. ☐ Surviving widow(er) with dependent child

EXEMPTIONS

2a. Regular	☒ Yourself	☒ Wife	Enter number of boxes checked	2
b. Age 65 or over	☐ Yourself	☐ Wife		
c. Blind	☐ Yourself	☐ Wife		
3a. Number of your dependent children *who lived with you*				
b. Number of other dependents (from line 3, Part I, page 2)				
4. Total exemptions claimed				2

INCOME—If joint return, include all income of both husband and wife

Attach Copy B of Form W-2 Here

5. Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation		$ 12602.87
6. Other income (from line 9, Part II, page 2)	906.27	4702.48
7. Total (add lines 5 and 6)	12509.14	17305.35
8. Adjustments (from line 5, Part III, page 2)	Loss	(2869.34)
9. Total income (subtract line 8 from line 7)	13509.14	14436.01

FIGURE TAX BY USING EITHER 10 OR 11

TAX COMPUTATION

10. Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11 a, b, c, or d. Enter tax on line 12.		1589.67
11. Tax Rate Schedule— a. If you itemize deductions, enter total from Part IV, page 2 If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. The deduction computed under (1) or (2) is limited to $1,000 ($500 if married and filing separate return).		12846.34
b. Subtract line 11a from line 9 . . . See Schedule D Attached..	11919 .07	Loss (907.07)
c. Multiply total number of exemptions on line 4, above, by $600		11939.27
d. Subtract line 11c from line 11b. (Figure your tax on this amount by using tax rate schedule on page 10 of instructions. Enter tax on line 12.)	10719.47	1200.00 10739.27

TAX—CREDITS—PAYMENTS

Attach Check or Money Order Here

12. Tax (from either Tax Table, line 10, or Tax Rate Schedule, line 11)		2123.63
13. Total credits (from line 5, Part V, page 2)		90.94
14. Income tax (subtract line 13 from line 12)		2032.69
15. Self-employment tax (Schedule C-3 or F-1)		1657.64
16. Total tax (add lines 14 and 15)		375.05
If either you or your wife worked for more than one employer, see page 5 of instructions. 17a. Total Federal income tax withheld (attach Forms W-2)	1557.64	
b. 1964 Estimated tax payments (Office where paid) (Include 1963 overpayment allowed as a credit)	-	
c. Total (add lines 17a and 17b)	37[illegible]	375.05

TAX DUE OR REFUND

18. If payments (line 17c) are less than tax (line 16), enter Balance Due. Pay in full with this return. →
19. If payments (line 17c) are larger than tax (line 16), enter Overpayment →
20. Amount of line 19 you wish credited to 1965 Estimated Tax
21. Subtract line 20 from 19. Apply to: ☐ U.S. Savings Bonds, with excess refunded; or ☐ Refund only.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

SIGN HERE → Anna Silverman 3/30/64 Date
If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here: Signature of preparer other than taxpayer | Address | 3/30/64 Date

16—783634-1

5-B

FORM 1040—1964

PART I.—EXEMPTIONS—Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $600 or more?	(e) Amount YOU furnished for dependent's support. If 100% write "ALL"	(f) Amount furnished by OTHERS including dependent
1.				$	$
2.					

3. Total number of dependents listed above. Enter here and on line 3b, page 1 → ☐

PART II.—INCOME FROM ALL SOURCES OTHER THAN WAGES, SALARIES, ETC.

Dividends and Other Distributions

A. Gross amount	
B. Nontaxable and capital gain distributions	
C. Subtract item B from item A. (See details in lines 1a to 1d)	

Explanation of Item C (Write (H), (W), (J) for stock held by husband, wife, or jointly)

1a. Qualifying dividends (Name of payer)	
Pan Am.& Braniff& Am.Radiator	1375.00
Pen.RR & Crucible& Pitt Coke	1030.00
Am.Foreign Power& Sheller Mf	733.00
National Casting&Det.Steel&Spart	712.00
Budd Co.& Universal Marion	523.75
Anglo-Lautaro Nitrate Corp.	225.00
Total	4648.75
b. Subtract $100. If joint return see instructions	100.00
c. Balance	4548.75
d. Nonqualifying dividends (Name of payer)	
Total	
2. Total (add lines 1c and 1d) →	4548.75
3. Interest (Name of payer)	
Franklin Society Savings and Loan Association	105.20
American Savings Bank	28.73
Total interest income →	133.93
4. Pensions and annuities, rents and royalties, partnerships, and estates or trusts (Schedule B)	
5. Business income (Schedule C) Loss	(2869.34)
6. Sale or exchange of property (Schedule D) Loss	(907.07)
7. Farm income (Schedule F)	
8. Other sources (state nature)	
Total other sources →	
9. Add lines 2 through 8. Enter here and on line 6, page 1 →	

PART III.—ADJUSTMENTS

1. "Sick pay" if included in line 5, page 1 (Attach Form 2440 or other required statement)	
2. Moving expenses (attach Form 3903)	
3. Employee business expense (attach Form 2106 or other statement)	
4. Payments by self-employed persons to retirement plans, etc. (Attach Form 2950SE)	
5. Total adjustments (lines 1 through 4). Enter here and on line 8, page 1	

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 7 of instructions.

PART IV.—ITEMIZED DEDUCTIONS—Use only if you do not use tax table or standard deduction.

Medical and dental expense.—Attach itemized list. Do not enter any expense compensated by insurance or otherwise. NOTE: If you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of instructions for possible larger deduction.

1. Enter excess, if any, of medicine and drugs over 1% of line 9, page 1	
2. Other medical, dental expenses (include hospital insurance premiums)	
3. Total (add lines 1 and 2)	
4. Enter 3% of line 9, page 1 (see note above)	
5. Subtract line 4 from line 3: see page 8 of instructions for maximum limitation	

Contributions.—If other than money, attach required statement—see instructions:

Mahopac Temple,Mahopac,NY	171.00
Rep.Co.Committee.N.Y.Co.	100.00
Fed.Rep.Club,New York City	150.00
Red Cross,Heart Fund,etc.,	100.00
Salvation Army,March of Dimes,Cerebral Palsy,etc.	100.00
East Side Hebrew Institute	75.00
Total (see instructions for limitations) →	696.00
Interest: Home mortgage	
Other (Specify)	
Total interest expense →	
Taxes—Real estate & School Tax	524.32
State and local gasoline	
General sales	40.00
State and local income	329.35
Personal property	
Total taxes →	893.67
Other deductions (see page 9 of instructions)	
Total other deductions →	1589.67
TOTAL DEDUCTIONS (For line 11a, page 1) →	

PART V.—CREDITS

1. Dividends received credit: Enter smallest of (a) 2% of line 1c, Part II, (b) tax shown on line 12, page 1, less foreign tax credit, or (c) 2% of taxable income (see instructions).		90.94
2. Retirement income credit (Schedule B)		
3. Investment credit (Form 3468)		
4a. Foreign tax credit (Form 1116)		
b. Tax-free covenant bonds credit		
5. Total credits (add lines 1 through 4b). Enter here and on line 13, page 1		90.94

☆☆ U.S. GOVERNMENT PRINTING OFFICE: 1964—O-725-541

A-116

WITHHOLDING TAX STATEMENT 1964

Federal taxes withheld from wages

Copy A—For District Director

F.L.Silverman 12 1668857
280 Broadway,N.Y.7,N.Y.

Type or print EMPLOYER'S identification number, name, and address above.

SOCIAL SECURITY INFORMATION		INCOME TAX INFORMATION		
$ None. F.I.C.A. employee tax withheld, if any	$ Total F.I.C.A. wages paid in 1964	$ None Federal income tax withheld, if any	$ 632.10 Total wages* paid in 1964	

Morris Schaeffer
28-09 Seagirt Boulevard
Far Rockaway,N.Y.

Type or print EMPLOYEE'S social security account no., name, and address above.

EMPLOYER: See instructions on other side.

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared ....

*Before payroll deductions or "sick pay" exclusion.

FORM W-2—U.S. Treasury Department, Internal Revenue Service

SCHEDULE C
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Sole Proprietorships)
(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1964

Attach this schedule to your income tax return, Form 1040 --- Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040

Frank L.Silverman-Anna Silverman,316 East 8th Street,N.Y.9,N.Y.

A. Principal business activity Lawyer ; product
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B. Business name Frank L.Silverman
C. Employer Identification Number 12 1668957
D. Business location 280 Broadway,New York,N.Y.,10007 (Number and street or rural route) - (City or post office) N.Y. (State)
E. Indicate method of accounting: ☒ cash; ☐ accrual; ☐ other.

1.	Gross receipts or gross sales $ 2157.94 Less: Returns and allowances $		$ 2157.94
2.	Inventory at beginning of year (If different than last year's closing inventory attach explanation)		
3.	Merchandise purchased $, less cost of any items withdrawn from business for personal use $		
4.	Cost of labor (do not include salary paid to yourself) See W-2 Att.	632.10	
5.	Material and supplies	*1675.02	
6.	Other costs (explain in Schedule C-1)	*1675.02	
7.	Total of lines 2 through 6		
8.	Inventory at end of this year		
9.	Cost of goods sold (line 7 less line 8)		2307.12
10.	Gross profit (subtract line 9 from line 1)	Loss	(149.18)

OTHER BUSINESS DEDUCTIONS

11.	Depreciation (explain in Schedule C-2)		
12.	Taxes on business and business property (explain in Schedule C-1)		
13.	Rent on business property	1250.14	
14.	Repairs (explain in Schedule C-1)		
15.	Salaries and wages not included on line 4 (exclude any paid to yourself)		
16.	Insurance		
17.	Legal and professional fees		
18.	Commissions		
19.	Amortization (attach statement)		
20.	Retirement plans, etc. (other than your share—see instructions)		[illegible] TTABLE
21.	Interest on business indebtedness		
22.	Bad debts arising from sales or services		
23.	Losses of business property (attach statement)		
24.	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
25.	Other business expenses (explain in Schedule C-1)	1670.02	
26.	Total of lines 11 through 25		2720.16
27.	Net profit (or loss) (subtract line 26 from line 10). Enter here; on line 1, Schedule C-3; and on line 5, Part II, page 2, Form 1040		Loss- (2869.34)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
6(C-1)	N.Y.County Law	$ 35.00	6(C-1)	Process Server	$ 51.50
"	U.S.Postage,etc.	175.00	"	~~Repair~~ Repair of car	167.24
"	TelanswerphoneSer.	143.00		Law Periodicals	125.00
"	Stat.& Printing,	225.00		Law Publications	125.00
"	Office Repairs	45.00		Total - - - - - -	$468.74
"	Photos Exhibits	33.28			
"	Ent.of Clients	350.00			
"	Miscellaneous,etc.	125.00			
"	Petty Cash,etc.,	75.00			
"		$1206.28			

(6)

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62-21 as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class OR Description of property	2. Cost or other basis at beginning of year OR Cost or other basis	3. Asset additions in year (amount) OR Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life OR Rate (%) or life	8. Depreciation for this year
1. Total additional first-year depreciation (do not include in items below) →							
2. Totals							
3. Less: Amount of depreciation claimed elsewhere in Schedule C							
4. Balance—Enter here and on line 11, page 1							
5. Cost or other basis of fully depreciated assets still in use							

INVENTORY QUESTIONS

1. Was inventory valued at—Cost ☐; lower of cost or market ☐; other ☐. If other, attach explanation.
2. Have write-downs been made to inventory? Yes ☐ No ☐. If "Yes," were the write-downs computed on the basis of:
   - (a) ☐ Percentage reductions from parts of the inventory
   - (b) ☐ Percentage reductions from the total inventory
   - (c) ☐ Valuation of individual items.

     If "a" or "b" is checked, enter the percentage of write-downs ....%. For "a," "b," or "c" enter the dollar amount of write-downs $..........................

     (If not available, estimate and indicate that the figure is an estimate.)
3. Was the inventory verified by physical count during the year?
   Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.
4. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? Yes ☐ No ☐. If "Yes," attach explanation.

NOTE: If a direct answer cannot be given to a question, attach explanation.

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and Wages
Owner		XXXXXXXXXXXXXX
1.		
2.		
3.		
4.		
5.		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

G. Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

H. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

I. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

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Frank L. Silverman
S.S.No.124-20-8156
Line 25-C-1

Liability Insurance	$232.51
Collision Insurance	75.00
Garage Rent of car	324.00
Car wash	104.00
Phone	260.00
Bridge Tolls	30.00
New York County Lawyers Association	35.00
Parking meters	115.00
Miscellaneous parking and etc.,	75.00
Office Maintenance	35.00
Gasoline, etc.,	384.51
Total	$1670.02

SCHEDULE D
(Form 1040)

U.S. Treasury Department—Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

Attach this schedule to your income tax return, Form 1040

1964

Name and address as shown on page 1 of Form 1040
Frank L. and Anna Silverman, 316 East 8th Street, New York, N.Y. 10009

Part I—CAPITAL ASSETS

Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1. Am. Radiator & Stan. Sanotary Co.	3/10/53	4/23/64	6869.31		4758.39	2110.92
Airbalance, Inc.	10/3/61	12/8/64	984.10		2500.00	(1515.90)
Aceto Chemical Co.	3/15/62	12/3/64	410.09		1912.50	(1502.09)

2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
3. Enter unused capital loss carryover from 5 preceding taxable years (attach statement)
4. Net short-term gain (or loss) from lines 1, 2, and 3

Long-term capital gains and losses—assets held more than 6 months

5. Enter gain from line 3, Part II

Total long-term gross sales price

6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries
7. Capital gain dividends
8. Net long-term gain (or loss) from lines 5, 6, and 7 Loss (907.07)
9. Combine the amounts shown on lines 4 and 8, and enter the net gain (or loss) here
10a. If line 9 shows a GAIN—Enter 50% of line 8 or 50% of line 9, whichever is smaller. (Enter zero if there is a loss or no entry on line 8.) (See reverse side for computation of alternative tax)
b. Subtract line 10a from line 9. Enter here and on line 1, Part IV
11. If line 9 shows a LOSS—Enter here and on line 1, Part IV the smallest of the following: (a) the amount on line 9; (b) the amount on line 11b, page 1 of Form 1040 computed without regard to capital gains and losses; or (c) $1,000 (907.07)

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1.				

f. Depreciation allowed (or allowable) since acquisition (attach schedule)		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h) —OR— (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 —OR— Prior to January 1, 1964	f-2. After December 31, 1961 —OR— After December 31, 1963				

2. Total ordinary gain. Enter here and on line 2, Part IV
3. Total other gain. Enter here and on line 5, Part I; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j on line 1, Part III

FORM 870 | WAIVER OF RESTRICTIONS ON ASSESSMENT AND | INTERNAL REVENUE

PROVED

A-121

Form 1040 U.S. Individual Income Tax Return 1965

for the year January 1-December 31, 1965 or other taxable year beginning Jan. 1st, 1965, ending Dec. 31st 1965 US Treasury Department—Internal Revenue Service

First name and initial (If joint return, use first names and middle initials of both) FRANK L. and ANNA	Last name SILVERMAN	Your social security number (Husband's if joint return) 124 20 8156
Home address (Number and street or rural route) 316 East 8th Street		Your occupation & present employer
City, town or post office, and State New York, N.Y. 10007	Postal ZIP code	Wife's number, if joint return
Enter the name and address used on your return for 1964 (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1964 names and addresses.		Wife's occupation & present employer

Attach Copy B of Form W-2 here

Filing Status—check one:

1a ☐ Single

1b ☒ Married filing joint return (even if only one had income)

1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow(er) with dependent child

Exemptions	Regular	65 or over	Blind	
2a Yourself	☒	☐	☐	Enter number of exemptions checked ▶▶▶ 1
2b Wife	☒	☐	☐	1

3a First names of your dependent children who lived with you. Enter number ▶▶▶

3b Number of other dependents (from page 2 Part I, line 3) 2

4 Total exemptions claimed ▶▶▶

Income If joint return, include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶	13715.01
	6	Other income (from page 2, Part II, line 9) ▶	37.72
	7	Total (add lines 5 and 6)	13752.73
	8	Adjustments (from page 2, Part III, line 5) ▶	
	9	Total income (subtract line 8 from line 7) ▶	13752.73
Tax Computation		Figure tax by using either 10 or 11	
	10	Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11 a, b, c, or d. Enter tax on line 12.	
	11	Tax Rate Schedule—	
	11a	If you itemize deductions, enter total from page 2, Part IV If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. The deduction computed under (1) or (2) is limited to $1,000 ($500 if married and filing separate return). ▶	1959.45 11793.28
	11b	Subtract line 11a from line 9	11793.28
	11c	Multiply total number of exemptions on line 4, above, by $600	1200.00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	10593.28
Tax Credits Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	1950.52
	13	Total credits (from page 2, Part V, line 5) ▶	
	14	Income tax (subtract line 13 from line 12)	
	15	Self-employment tax (Schedule C-3 or F-1) ▶	
	16	Total tax (add lines 14 and 15) ▶	
If either you or your wife worked for more than one employer see page 6 of instructions	17a	Total Federal income tax withheld (attach Forms W-2) ▶ 1730.93	1730.93
	17b	1965 Estimated tax payments ▶ (Include 1964 overpayment allowed as a credit) (Office where paid)	
	17c	Total (add lines 17a and 17b)	
Tax Due or Refund	18	If payments (line 17c) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	219.71
	19	If payments (line 17c) are larger than tax (line 16) enter Overpayment ▶▶▶	
	20	Amount of line 19 you wish credited to 1966 Estimated Tax	
	21	Subtract line 20 from 19. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	

Please print or type

Attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ Frank Silverman & Anna Silverman Date April 12, 1966

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here .... Date ....

Signature of preparer other than taxpayer. Address

A-122

PART I. Exemptions Complete only for dependents claimed on line 3b, page 1 Form 1040 1965 Page 2

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $600 or more?	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by OTHERS including dependent
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b ▶▶▶▶

PART II. Income from all sources other than wages, salaries, etc.

Dividends and Other Distributions

A Gross amount	
B Nontaxable and capital gain distributions	
C Subtract item B from Item A. Give details in lines 1a through 1d	

Explanation of C (Write (H), (W), (J), for stock held by husband, wife, or jointly)

1a Qualifying dividends (name of payer) Pan.Am.Braniff Penn.R.R.Co.Pitts Coke & Chem.Am.For. Power,Det.Steel.Budd Co.Universal Marion.Anglo Lautaro.Daitch. Gen.An. & Film Corp.Moeller Mfg Co.Crucible Steel Co.

Total qualifying	5258.00
1b Subtract $100. If joint return see instructions	200.00
1c Balance (but not less than zero)	5058.00

1d Nonqualifying dividends (name of payer)

Total nonqualifying	
2 Total dividends (add lines 1c and 1d) ▶▶▶▶	5058.00

3 Interest (name of payer)

Franklin Savings & Loan Association $123.44

American Savings Bank 18.60

Total interest income ▶▶▶▶	142.04
4 Pensions and annuities, rents and royalties, partnerships, & estates or trusts (Schedule B)	
5 Business income (Schedule C) ▶	(4162.32)
6 Sale or exchange of property (Schedule D)	1000.00
7 Farm income (Schedule F) ▶	

8 Other sources (state nature)

Total other sources ▶▶▶▶	[illegible]
9 Add lines 2 through 8. Enter here and on page 1 line 6. ▶▶▶▶	37.72

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement)	
2 Moving expenses (attach Form 3903)	
3 Employee business expense (attach Form 2106 or other statement)	
4 Payments by self-employed persons to retirement plans, etc. (attach Form 2950SE)	
5 Total adjustments (lines 1 through 4). Enter here and on page 1, line 8	

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 7 of instructions.

PART IV. Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense.—Attach itemized list. Do not enter any expense compensated by insurance or otherwise. NOTE: if you or your wife are 65 or over, or if either has a dependent parent 65 or over, see page 8 of instructions for possible larger deduction:

1 Enter excess, if any, of medicine and drugs over 1% of line 9, page 1 (See note above)	
2 Other medical, dental expenses (include hospital insurance premiums)	
3 Total (add lines 1 and 2)	
4 Enter 3% of line 9, page 1 (See note above)	
5 Subtract line 4 from line 3; see page 8 of instructions for maximum limitation ▶	

Contributions.—Cash—including checks, money orders, etc. (itemize)

Mahopac Temple	196.00
Mahopac Owners Association,Inc.	100.00
Heart Fund,Cerebral Palsy,etc.	100.00
Rep.Cnty Committee	100.00
State Rep.Committee	100.00
Red Cross,Sal.Army,etc.,	100.00
Vet. [illegible] Club,Odd Fellows	75.00

1 Total cash contributions	771.00
2 Other than cash (see instructions for required statement). Enter total of such items here	
3 Total contributions (add lines 1 and 2—see instructions for limitations) ▶▶▶▶	771.00

Taxes.—Real estate School Tax $	616.31
State and local gasoline $	
General sales $	100.00
State and local income $	455.00
Personal property $	
Total taxes ▶▶▶▶	1171.31

Interest expense.—Home mortgage $

Other (itemize)

Franklin Savings & Loan Association $17.14

Total interest expense ▶▶▶▶	17.14

Other deductions.—(see page 9 of instructions)

Total other deductions ▶▶▶▶	~~1959.45~~
TOTAL DEDUCTIONS (for page 1, line 11a) ▶	~~[illegible]~~

PART V. Credits

1 Retirement income credit (Schedule B)	
2 Investment credit (Form 3468)	
3 Foreign tax credit (Form 1116)	
4 Tax-free covenant bonds credit	
5 Total credits (add lines 1 through 4). Enter here and on page 1, line 13	

U.S. GOVERNMENT PRINTING OFFICE: 1965—O-780-837

BEST COPY AVAILABLE

A-123

F.L.Silverman 12 1668857
258 Broadway
New York,N.Y.10007

Type or print EMPLOYER'S identification number, name, and address above.

WAGE AND TAX STATEMENT 1965

Copy A—For District Director

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld	Wages[1] paid subject to withholding in 1965	Other compensation[2] paid in 1965	F.I.C.A. employee tax withheld	Total F.I.C.A. wages paid in 1965
None	609.17	609.17		

Type or print EMPLOYEE'S social security number →

Morris Schaeffer
28-09 Seagirt Boulevard
Far Rockaway,New York

Type or print EMPLOYEE'S name and address above.

[1] Before payroll deductions or "sick pay" exclusions.

[2] The block marked "Other compensation" is for use in reporting salary or other compensation which was not subject to withholding and which was heretofore reported on Form 1099. In 1965 this type of income may be shown on either the W-2 or the 1099 (but not on both).

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared ....

FORM W-2—U.S. Treasury Department, Internal Revenue Service

EMPLOYER: See instructions on back of copy D.

16—78428-1

A-124

1

U.S. INFORMATION RETURN FOR CALENDAR YEAR 1965

(See instructions on Form 1096)

Copy A
For Internal Revenue Service

SCHEDULE A			SCHEDULE B			
1. Dividends and other distributions	2. Interest	3. Patronage dividends and certain other distributions by cooperatives	4. Salaries, fees, commissions, prizes, awards, or other compensation. Do *not* include amounts reported on Form W-2	5. Rents and royalties	6. Annuities, pensions, and other fixed or determinable income	7. Foreign items
			675.00			

Type or print taxpayer identifying number →

Manuel L. Katz, Esq.
165 Broadway
New York, N.Y.

TO WHOM PAID Type or print name and address. If account is for multiple payees with different surnames or it includes the name of a fiduciary, trust or estate, designate the name of the individual or entity to whom the identifying number belongs.

U.S. Treasury Department, Internal Revenue Service

Frank L. Silverman
280 Broadway
New York, N.Y. 10007

BY WHOM PAID (Name, address, and identifying number)

16—78490-1

Form 1099

A-125

FRANK L.SILVERMAN
S.S.No. 124-20-8156
Schedule (C-1,Line 14)

1961 Olds, depreciated in 1962 to $1650.00

Depreciated (Car). 1961,olds	$ 825.00
Liability Insurance(Car)	154.08
Repairs of car	388.19
Rent (Car)	303.74
Gas & Oil(Car)	385.04
Tolls	65.00
Car Wash,etc.,	125.00
Parking Meters	75.00
Miscellanepus dis.	75.00
Total	$2396.05

Schedule (C-1,Line 25)

N.Y.County Lawyers Assoication Dues	$ 50.00
Stenographic Services	206.90
Telephone Service	207.47
Telanswering Service	158.85
Referee Association Dues	50.00
Stationery & Printing.etc.,	225.00
Process services	42.00
Law Periodicals	175.00
Postage,etc.,	150.00
Miscellaneous disbursements	75.00
Moving expenses,etc.,	75.00
Entertainment of clients	350.00
Petty Cash	75.00
Total	$1840.22

A-126

SCHEDULE C
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

(Sole Proprietorships)
(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1965

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040
FRANK L. and ANNA SILVERMAN-316 E.8th Street,New York,N.Y.

A. Principal business activity Legal ; product
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B. Business name FRANK L.SILVERMAN **C. Employer Identification Number** 12 1668857

D. Business location
(Number and street or rural route) (City or post office) (State)

E. Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

1. Gross receipts or gross sales $ 2880.67 Less: Returns and allowances $		$ 2880.	67
2. Inventory at beginning of year (If different than last year's closing inventory attach explanation)	-		
3. Merchandise purchased $, less cost of any items withdrawn from business for personal use $			
4. Cost of labor (do not include salary paid to yourself)	1284.17		
5. Material and supplies	100.00		
6. Other costs (explain in Schedule C-1)	172.60		
7 Total of lines 2 through 6			
8. Inventory at end of this year			
9. Cost of goods sold (line 7 less line 8)		1556.	77
10. Gross profit (subtract line 9 from line 1)		1323.	90
OTHER BUSINESS DEDUCTIONS			
11. Depreciation (explain in Schedule C-2)			
12. Taxes on business and business property (explain in Schedule C-1)	1250.04		
13. Rent on business property	2396.05		
14 Repairs (explain in Schedule C-1)			
15. Salaries and wages not included on line 4 (exclude any paid to yourself)			
16. Insurance			
17. Legal and professional fees			
18. Commissions			
19. Amortization (attach statement)			
20. Retirement plans, etc. (other than your share—see separate instructions)			
21. Interest on business indebtedness			
22. Bad debts arising from sales or services			
23. Losses of business property (attach statement)			
24. Depletion of mines, oil and gas wells, timber, etc. (attach schedule)			
25. Other business expenses (explain in Schedule C-1)	1840.22		
26. Total of lines 11 through 25		5486.	31
27. Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on page 2, Part II, line 5, Form 1040		(4162.	41)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

C

Line No.	Explanation	Amount	Line No.	Explanation	Amount
6(C-1)	Mamaliga v Karpink	$ 100.00			$
	Papeli v City of N.Y.	50.00			
	Transportation	11.00			
/	Letterings	11.00			
		$172.60			

16—78563-1

SCHEDULE C–2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedure 62–21 as well as for those taxpayers who wish to continue using procedures authorized prior to the revenue procedure. Where double headings appear use the first heading for the new procedure and the second heading for the older procedure.

1. Group and guideline class OR Description of property	2. Cost or other basis at beginning of year OR Cost or other basis	3. Asset additions in year (amount) OR Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life OR Rate (%) or life	8. Depreciation for this year
1. Total additional first-year depreciation (do not include in items below) →							
2. Totals							
3. Less: Amount of depreciation claimed elsewhere in Schedule C							
4. Balance—Enter here and on page 1, line 11							

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and Wages
Owner		XXXXXXXXXXXXXX
1.		
2.		
3.		
4.		
5.		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F. A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

G. Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W–2.) ☐ YES ☐ NO

H. The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

I. The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

ADDITIONAL INFORMATION

1. Was there any substantial change in the manner of determining quantities, costs or valuations between the opening and closing inventories? ☐ YES ☐ NO. If "Yes," attach explanation.

2. Are you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1965? (See last paragraph of separate instructions for Schedule C.) ☐ YES ☐ NO. If "Yes," where were they filed? ____________

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SCHEDULE C-3
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

COMPUTATION OF SOCIAL SECURITY SELF-EMPLOYMENT TAX

Attach this schedule to your income tax return, Form 1040.
See instructions on page 2.

1965

NOTE.—Fiscal year taxpayers see "Important New Features" on page 2 of Form 1040 Instructions.

- ▶ If you had wages of $4,800 or more which were subject to social security taxes, do not fill in this page.
- ▶ Complete only one Schedule C-3; if you had more than one business, combine profits (or losses) from all of your businesses on this Schedule.
- ▶ Each self-employed person must file a separate schedule.

NAME AND ADDRESS (as shown on page 1 of Form 1040)
FRANK L. and ANNA SILVERMAN, 316 E.8th Street, New York, N.Y.10007

NAME OF SELF-EMPLOYED PERSON (as shown on social security card)

Social Security Number
120 20 3156

1. Net profit (or loss) shown in Schedule C (Form 1040), line 27 (**Enter combined amount if more than one business**)			(4162	32)
2. Add to net profit (or subtract from net loss) losses of business property shown in Schedule C, line 23				
3. Total (or difference)			(4162	32)
4. Net income (or loss) from excluded services or sources included on line 3 Specify excluded services or sources				
5. Net earnings (or loss) from self-employment— (a) From business (line 3 less any amount on line 4)			(4162	32)
(b) From partnerships, joint ventures, etc. (other than farming)				
(c) From service as a minister, member of a religious order, or a Christian Science practitioner. Enter only if you have filed or are filing Form 2031				
(d) From farming reported on line 2 (or line 3 if option used), separate Schedule F-1 (Form 1040)				
(e) From service with a foreign government or international organization				
6. Total net earnings (or loss) from self-employment reported on line 5. Enter here and in item F below **(If line 6 is under $400, you are not subject to self-employment tax. Do not fill in rest of page.)**				
7. The largest amount of combined wages and self-employment earnings subject to social security tax is	$ 4,800	00		
8. Total wages, covered by social security, paid to you during the taxable year. (For "Covered" wages see "F.I.C.A. Wages" box on Form W-2.) Enter here and in item G, below				
9. Balance (line 7 less line 8)	$			
10. Self-employment income—line 6 or 9, whichever is smaller. Enter here and in item H, below				
11. Self-employment tax—If line 10 is $4,800, enter $259.20; if less, multiply the amount on line 10 by 5.4%. Enter this amount here and on page 1, line 15, Form 1040				

Do not detach

c59—16—78863-1

Important.—The amounts reported on the form below are for your social security account. This account is used in figuring any benefits, based on your earnings, payable to you, your dependents, and your survivors. Fill in each item accurately and completely.

SCHEDULE SE (Form 1040)
U.S. Treasury Department
Internal Revenue Service

U.S. REPORT OF SELF-EMPLOYMENT INCOME

For crediting to your social security account

1965

A. Indicate year covered by this return (even though income was received only in part of year):
Calendar year 1965 ☐; or other taxable year beginning ...., 1965, ending ....
If less than 12 months, was short year due to (a) ☐ Death, or (b) ☐ Change in accounting period, or (c) ☐ Other.

B. BUSINESS ACTIVITIES SUBJECT TO SELF-EMPLOYMENT TAX (Grocery store, restaurant, etc.)

C. BUSINESS ADDRESS (number and street, city or post office, State, Postal ZIP code)

D. SOCIAL SECURITY ACCOUNT NUMBER OF PERSON NAMED IN ITEM E BELOW ⇨

E. PRINT OR TYPE NAME OF SELF-EMPLOYED PERSON AS SHOWN ON SOCIAL SECURITY CARD
PRINT OR TYPE HOME ADDRESS (number and street or rural route)
(City or post office, State, and Postal ZIP code)

PLEASE DO NOT WRITE IN THIS SPACE

F. ENTER AMOUNT FROM LINE 6 $
G. ENTER AMOUNT FROM LINE 8, IF ANY $
H. ENTER AMOUNT FROM LINE 10 $

SE

16—78863-1 GPO

A130

SCHEDULE D
(Form 1040)

U.S. Treasury Department—Internal Revenue Service

GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

Attach this schedule to your income tax return, Form 1040

1965

Name and address as shown on page 1 of Form 1040
Frank L.& Anna Silverman, 316 E.8th Street, N.Y.9, N.Y.

Part I—CAPITAL ASSETS

Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition (attach schedule)	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1.						

2. Enter your share of net short-term gain (or loss) from partnerships and fiduciaries
3. Enter unused short-term capital loss carryover from preceding taxable years (attach statement)
4. Net short-term gain (or loss) from lines 1, 2, and 3

Long-term capital gains and losses—assets held more than 6 months

5. Enter gain from Part II, line 3						
Diversified Col.Corp.	12/19/61 &		Bankrupt		1745.00	
	12/20/61		"		436.25	
Total long-term gross sales price						(2181.25)

6. Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries
7. Enter unused long-term capital loss carryover from preceding taxable years (attach statement) 0
8. Capital gain dividends
9. Net long-term gain (or loss) from lines 5, 6, 7, and 8 (2181.25)
10. Combine the amounts shown on lines 4 and 9, and enter the net gain (or loss) here (2181.25
11. **If line 10 shows a GAIN**—Enter 50% of line 9 or 50% of line 10, whichever is smaller. (Enter zero if there is a loss or no entry on line 9.) **(See reverse side for computation of alternative tax)** 0
12. Subtract line 11 from line 10. Enter here and in Part IV, line 1, on reverse side
13. **If line 10 shows a LOSS**—Enter here and in Part IV, line 1, the **smallest** of the following: (a) the amount on line 10; (b) the amount on page 1, line 11b, Form 1040, computed without regard to capital gains and losses; or (c) $1,000 (2181.25 (1000.00

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months

D

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1.				

f. Depreciation allowed (or allowable) since acquisition (attach schedule)		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h) —OR— (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 —OR— Prior to January 1, 1964	f-2. After December 31, 1961 —OR— After December 31, 1963				

2. Total ordinary gain. Enter here and in Part IV, line 2, on reverse side
3. Total other gain. Enter here and in Part I, line 5; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column i in Part III, line 1

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Rec
9/18/72
Certified Mail

P.O. Box 2954, Church St. Sta., New York, N.Y. 10008
Department of the Treasury

Regional Commissioner
Internal Revenue Service
North-Atlantic Region

Date: SEP 15 1972

In reply to refer to: AP:NY:DLK:MS

▷ Mr. Frank L. Silverman and
Mrs. Anna Silverman
58-19 262nd Street
Little Neck, N. Y. 11362

Dear Mr. & Mrs. Silverman:

Tax Year Ended	Deficiency Tax	Addition To the Tax For Fraud Sec. 6653(b)	Liability of Anna Silverman Limited to Deficiency of: Tax
December 31, 1963	$ 9,621.42	$ 4,810.71	$ 9,621.42
December 31, 1964	12,437.66	6,218.83	12,437.66
December 31, 1965	23,678.20	11,839.10	23,678.20

This letter is to notify you--as required by law--that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

-over-

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FORM 4089 (REV. MAY 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE STATUTORY NOTICE STATEMENT	SYMBOLS AP:NY:DLK:MS

Mr. Frank L. Silverman and Mrs. Anna Silverman
58-19 262nd Street
Little Neck, N. Y. 11362

KIND OF TAX
Income

TAX YEAR ENDED	Tax	Addition to The Tax For Fraud Sec. 6653(b)	Liability of Anna Silverman Limited to Deficiency of: Tax
December 31, 1963	$ 9,621.42	$ 4,810.71	$ 9,621.42
December 31, 1964	12,437.66	6,218.83	12,437.66
December 31, 1965	23,678.20	11,839.10	23,678.20
Totals	$45,737.28	$22,868.64	$45,737.28

The provisions of section 6013(e) of the Internal Revenue Code do not relieve either spouse of liability.

It is determined that all or part of the underpayment of tax required to be shown on the returns for the taxable years ended December 31, 1963, 1964 and 1965 is due to fraud. Consequently, the 50 per centum addition to the tax provided by section 6653(b) of the Internal Revenue Code of 1954 is asserted for each of those years. Since no part of the underpayment is due to fraud on the part of Anna Silverman, this addition to tax does not apply to her.

☐ Copy to Authorized Representative:

FORM 4089 (REV. 5

U. S. GOVERNMENT PRINTING OFFICE : [illegible]

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FORM 3611 (REV. MAR. 1970)	INDIVIDUAL INCOME TAX	STATEMENT SCHEDULE

NAME Frank L. Silverman and Anna Silverman	TAXABLE YEARS ENDED		
	Dec. 31, 1963	Dec. 31, 1964	Dec. 31, 1965
TAXABLE INCOME AS SHOWN IN: ☒ RETURN AS FILED ☐ PRELIMINARY LETTER DATED ☐ STATUTORY NOTICE DATED	8,872.55	10,739.27	10,593.28
INCREASES (DECREASES) IN INCOME: *(See attached explanation of items)*			
(a) Unreported income	22,258.36	29,468.76	51,830.26
(b) Unsubstantiated deductions	3,408.06	3,220.83	4,713.90
TAXABLE INCOME AS REVISED	34,538.97	43,428.86	67,137.44
TAX COMPUTATION			
TAX Joint return-Alternative Tax-1964, 1965	11,669.49	14,630.30	25,628.72
TAX SURCHARGE			
TAX PLUS SURCHARGE	11,669.49	14,630.30	25,628.72
LESS: TAX CREDITS Dividends Received Credit	299.37	159.95	
SUBTOTAL	11,370.12	14,470.35	25,628.72
ADD: SELF-EMPLOYMENT TAX			
TAX FROM RECOMPUTING PRIOR YEAR INVESTMENT CREDIT			
TAX LIABILITY	11,370.12	14,470.35	25,628.72
LIABILITY PREVIOUSLY ASSESSED	1,748.70	2,032.69	1,950.52
DEFICIENCY *(Overassessment)*	9,621.42	12,437.66	23,678.20
Addition to the Tax - section 6653(b)	4,810.71	6,218.83	11,839.10

FORM 3612 (REV. APR. 1969)	INDIVIDUAL ALTERNATIVE TAX COMPUTATION	STATEMENT SCHEDULE

NAME Frank L. Silverman and Anna Silverman	TAXABLE YEARS ENDED Dec. 31, 1964		Dec. 31, 1965
1. TAXABLE INCOME AS REVISED (STATEMENT SCHEDULE ____)	43,428.86		67,137.44
2. LESS: 50% OF EXCESS OF NET LONG-TERM CAPITAL GAIN OVER NET SHORT-TERM CAPITAL LOSS	253.29		17,716.81
3. BALANCE	43,175.57		49,420.63
4. TAX ON AMOUNT ON LINE 3	14,503.66		16,770.32
5. ADD: 50% OF LINE 2	126.64		8,858.40
6. INCOME TAX, ALTERNATIVE METHOD	14,630.30		25,628.72
7. INCOME TAX, REGULAR METHOD	14,631.57		26,145.59

Frank L. Silverman and
Anna Silverman

Explanation of Adjustments

(a) In the absence of adequate records your taxable income for the years 1963, 1964 and 1965 is computed by reference to bank deposits and cash payments plus personal and other nondeductible expenditures. Thus your income is increased from unexplained deposits and other unreported income as follows:

Unreported Income	1963	1964	1965
Unexplained Deposits	$11,584.09	$22,653.24	$25,601.86
Dividend Income	3,570.77	3,618.33	5,709.70
Interest Income	765.16	875.57	728.58
Business Income (Sch. C)	6,039.81	933.87	812.00
Capital Gains Income	40.14	1,160.36	18,716.81
Commission Income	258.39	227.39	261.31
Totals	$22,258.36	$29,468.76	$51,830.26

(b) Deductions claimed for the years 1963, 1964 and 1965 are not allowed because it is not established that the amounts disallowed represents ordinary and necessary expenses or were expended for the purposes designated your income is increased accordingly.

Unsubstantiated Deductions Disallowed			
Business Expenses (Sch. C)	$ 2,967.31	$2,631.16	$3,754.45
Itemized Deductions	1,440.75	1,589.67	1,959.45
Standard Deduction Allowed	(1,000.00)	(1,000.00)	(1,000.00)
Totals	$ 3,408.06	$3,220.83	$4,713.90

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Mr. Frank L. Silverman and Mrs. Anna Silverman

FORM 870
(REV. JUNE 1969)
AP:NY:DLK:MS

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DATE RECEIVED BY INTERNAL REVENUE SERVICE

Pursuant to section 6213(d) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, the undersigned waives the restrictions provided in section 6213(a) of the Internal Revenue Code of 1954, or corresponding provisions of prior internal revenue laws, and consents to the assessment and collection of the following deficiencies with interest as provided by law. The undersigned also accepts the following overassessments as correct:

DEFICIENCIES

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	Sec. 6653(b) PENALTY	
December 31, 1963	Income	$ 9,621.42	$ 4,810.71	
December 31, 1964	Income	12,437.66	6,218.83	
December 31, 1965	Income	23,678.20	11,839.10	

OVERASSESSMENTS

YEAR ENDED	KIND OF TAX	AMOUNT OF TAX	PENALTY	

The provisions of section 6013(e) of the Internal Revenue Code are applicable to Anna Silverman. Since no part of the underpayment is due to fraud on the part of Anna Silverman, this addition to the tax does not apply to her.

NAME AND ADDRESS OF TAXPAYER(S) *(Number, street, city or town, State, ZIP Code)*

(The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.)

Signature(s)

DATE

DATE

BY

TITLE

DATE

NOTE: The execution and filing of this waiver will expedite the adjustment of your tax liability. It is not, however, a final closing agreement under section 7121 of the Internal Revenue Code and does not preclude assertion of a further deficiency in the manner provided by law if it is later determined that additional tax is due; nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

Furthermore, execution and filing of this waiver will not preclude the taxpayer's filing under section 6511 of the Code a timely claim for refund or credit, on which (if disallowed by the Service) suit may be brought in the appropriate District Court or the U.S. Court of Claims.

If this waiver is for a year for which a JOINT RETURN was filed, it must be signed by both husband and wife unless one, acting under a power of attorney, signs as agent for the other.

If the taxpayer is a corporation, this waiver must be signed with the corporate name followed by the signature and title of the officer(s) duly authorized to sign.

This waiver may be signed by the taxpayer's attorney or agent provided his action is specifically authorized by a power of attorney which, if not previously filed, must accompany the form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee, etc.), Form 56, "Notice of Fiduciary Relationship," should, unless previously filed, accompany this form.

U.S. GOVERNMENT PRINTING OFFICE : 1969 O—108-033

TAX COURT OF THE UNITED STATES

FRANK L.SILVERMAN and ANNA SILVERMAN,

Petitioners,

v. Docket No.9004-72

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency in tax and penalty set forth by the Commissioner of Internal Revenue in his notice of deficiency dated September 15,1972, and as a basis of this proceeding allege as follows:

1. The petitioners are individuals residing at 58-19 262nd Street,Little Neck,County of Queens,City and State of New York, and the return for the periods involved was filed with the Director for the 13th Manhattan District of New York.

2. The Notice of deficiency, a copy of which is attached hereto, and marked Exhibit "A" was mailed to the petitioners on or about September 15,1972.

3. The deficiency asserted by the Commissioner of Internal Revenue are for the taxable years ending December 31,1963, December 31,1964 and December 31,1965. The deficiency asserted by the Commissioner of Internal Revenue for the taxable year ending December 31,1963 is in the amount of $9,621.42 and 50% penalty thereon

in the amount of $4,810.71, aggregating in all the sum of $14,432.13 as to Petitioner FRANK L. SILVERMAN, and for the sum of $9,621.42 as to Petitioner ANNA SILVERMAN. The deficiency asserted by the Commissioner of Internal Revenue for the taxable year ending December 31, 1964 is in the amount of $12,437.66 and 50% penalty thereon in the amount of $6,218.83, aggregating in all the sum of $18,656.49 as to the Petitioner FRANK L. SILVERMAN, and for the sum of $12,437.66 as to Petitioner ANNA SILVERMAN. The deficiency asserted by the Commissioner of internal Revenue for the taxable year ending December 31, 1965, is in the amount of $23,678.20 and 50% penalty thereon in the amount of $11,839.10, aggregating in all the sum of $35,517.30 as to Petitioner FRANK L. SILVERMAN, and for the sum of $23,678.20 as to Petitioner ANNA SILVERMAN. The amount in dispute as to Petitioner, FRANK L. SILVERMAN is the sum of $14,432.13 for the taxable year ending December 31, 1963, in the sum of $18,656.49 for the taxable year ending December 31, 1964, in the sum of $35,517.30 for the taxable year ending December 31, 1965, and the amount in dispute as to Petitioner, ANNA SILVERMAN, is the sum of $9,621.42 for the taxable year ending December 31, 1963, in the sum of $12,437.66 for the taxable year ending December 31, 1964, in the sum of $23,678.20 for the taxable year ending December 31, 1965.

4. The determination of the tax set forth in the notice of deficiency is based upon the following errors.

(a). The Commissioner erred in determining the petitioners' net income for the years herein involved

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upon the expenditure and investment method, commonly termed the net worth method, rather than by audit of petitioners' books and records and in finding and determining deficiency in income taxes for the calendar years ending December 31, 1963, December 31, 1964 and December 31, 1965.

(b). Should it be held herein that the Commissioner did not err in determining petitioners' net income upon the net worth method, the Commissioner erred in holding and determining that petitioners realized an increase in net worth for the calendar year ending December 31, 1963 in the amount of $22,258.36, and an increase in net worth for the calendar year ending December 31, 1964 in the amount of $29,468.76, and an increase in net worth for the calendar year ending December 31, 1965 in the amount of $51,830.26 as set forth in the deficiency notice herein, or in any amounts giving rise to net taxable income in excess of that reported in the income tax returns of the petitioners for the said taxable years.

(c). The Commissioner erred in determining that petitioners realized additional dividend income in the amount of $3,570.77 in the taxable year ending December 31, 1963, $3,618.33 in the taxable year ending December 31, 1964, and $5,709.70 in the taxable year ending December 31, 1965, which allegedly petitioners did not report for Federal Income Tax purposes.

(d). The Commissioner erred in determining that petitioners realized taxable interest income in the amount $765.16 for the year ending December 31, 1963, $875.57 for the year ending December 31, 1964, and $728.58 for the year ending December 31, 1965, which petitioners allegedly did not report for Federal Income tax purposes.

(e). The Commissioner erred in determining that petitioners realized unreported taxable income in the amount of $11,584.09 for the taxable year ending December 31, 1963, $22,653.24 for the taxable year ending December 31, 1964, and the sum of $25,601.86 in the taxable year ending December 31, 1965, represented by unexplained deposits. Petitioners never realized unreported taxable income in the amount of $11,584.09 for the year ending December 31, 1963, nor the sum of $22,653.24 for the year ending December 31, 1964, nor the sum of $25,601.86 for the year ending December 31, 1965, as alleged by the Commissioner.

(f). The Commissioner erred in determing that petitioners realized taxable commission income in the amount of $258.39 for the calendar year ending December 31, 1963, $227.39 for the calendar year ending December 31, 1964, and $261.31 for the calendar year ending December 31, 1965.

(g). The Commissioner erred in determining that petitioners realized capital gains income in the sum of $40.14 for the calendar year ending December 31, 1963, the sum of $1,160.36 for the calendar year ending December 31, 1964, and the sum of $18,716.81 for the calender year ending December 31, 1965.

(h). The Commissioner erred in determining that petitoners realized business income in the amount of $6,039.81 for the calendar year ending December 31, 1963, in the amount of $933.87 for the calendar year ending December 31, 1964, and for the sum of $812.00 for the calendar year ending December 31, 1965, which petitioners allegedly did not report for Federal Income tax purposes.

(i). The Commissioner erred in determining that the itemized deductions be disallowed in the sum of $1,440.75 for the taxable year ending December 31, 1963, and the sum of $1,589.67 for the taxable year ending December 31, 1964, and the sum of $1,959.45 for the taxable year ending December 31, 1965, and in merely allowing the standard deduction of $1,000.00 for each of the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965.

(j). The Commissioner erred in disallowing business deductions (Schedule C) for the taxable year ending December 31, 1963 in the sum of $2,967.31, for the taxable year ending December 31, 1964 in the sum of $2,631.16, and for the taxable year ending December 31, 1965 in the sum of $3,754.45.

(k). Petitioners timely filed their income tax returns for the calendar years ending December 31, 1963, December 31, 1964 and December 31, 1965, and the respondent's determination and assessment of deficiency in income taxes for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965 are barred by the Statute of Limitations provided in Section 6501, et seq., United States Code, Title 26, Internal Revenue Code.

(l). Upon information and belief, that with notice of all of the acts of the petitioners set forth in the notice of deficiency dated September 15, 1972, the Respondent, Commissioner of Internal Revenue, refrained from sending a notice of deficiency and assessment until the 15th day of September, 1972, and has thereby been guilty of laches as should in equity bar the Commissioner of Internal Revenue from determining any deficiency for the years involved, e.g . 1963, 1964

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and 1965.

(m). Petitioner, FRANK L. SILVERMAN, was charged by the Respondent, Commissioner of Internal Revenue with income tax evasion for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965, and the notice of deficiency and assessment dated the 15th day of September, 1972, has place the petitioner, FRANK L. SILVERMAN, in double jeopardy and has violated his constitutional rights.

(n). The Commissionef 's determination of fraud penalties in the sum of $4,810.71 for the taxable year ending December 31, 1963, and fraud penalties in the sum of $6,218.83 for the taxable year ending December 31, 1964, and fraud penalties in the sum of $11,839.10 for the taxableyear ending December 31, 1965, as to pentitioner, FRANK L. SILVERMAN, pursuant to Section 6653(b) of the Internal Revenue Code is erroneous and should be dismissed as the petitioner, FRANK L. SILVERMAN, was innocent of any fraud in the preparation and filing of his income tax returns for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965, and the burden of proof in respect to the imposition of the 50% penalty is on the Respondent, Commissioner of Internal Revenue.

5. The facts upon which the petitioners rely as a basis of the proceeding are as follows:

(a) and (b). The Petitioners are residents of New York, New York, and during the calendar years 1963, 1964 and 1965, petitioner FRANK L. SILVERMAN, was employed by the Workmen's Compensation Board of the State of New York, and received wages for the calendar year 1963, in the sum of $11,643.83, and for the calendar year 1964, in the sum of

$12,602.87, and for the calendar year 1965, in the sum of $13,715.01, which amounts have been duly reported in the income tax returns for the years 1963, 1964 and 1965, and in addition thereto, petitioner FRANK L. SILVERMAN, conducted an office for the practice of law and has reported all of the income and expense of such office for the calendar years ending December 31, 1963, December 31, 1964 and December 31, 1965. The Commissioner in determining taxable income upon the net worth method has errounously lumpted all deposits, and brokers accounts deposits as taxable income, when in fact, such were capital and not taxable income. The returns for the years involved reported the income of petitioner, FRANK L. SILVERMAN, and that income so reported constituted the correct taxable net income of petitioners. Accordingly, the respondent's determination of the petitioners' net income on the net worth method does not correctly reflect petitioners' net income for the years involved, and the respondent's determination on said method is contrary to law. In the event, it it ultimately held that the respondent did not err in determining petitioners' net income on the net worth method, the respondent 's statement in the notice of deficiency asserted herein, or any deficiency asserted herein or any deficiency is erronous. Petitioner, ANNA SILVERMAN, during the tax years in question was a housewife, and had no taxable income.

(c). In his notice of deficiency herein, respondent, Commissioner of Internal Revenue, determined that petitioners realized additional taxable dividend income in the amount of $3,570.77 for the taxable year ending December 31, 1963, and additional taxable dividend income in the amount of

$3,618.33 for the taxable year ending December 31, 1964, and $5,709.70 for the taxable year ending December 31, 1965, which were not reported for Federal Income Tax purposes. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioners as to the nature or source of this alleged additional taxable dividend income, and the Commissioner is in error, as all dividend income for the years 1963, 1964 and 1965 were reported in the returns filed by the Petitioners for the years 1963, 1964 and 1965.

(d). In his notice of deficiency herein, the respondent determined that petitioners realized taxable interest income in the amount of $765.16 in the year ending December 31, 1963, in the amount of $875.57 for the year ending December 31, 1964, and in the amount of $728.58 for the year ending December 31, 1965, which petitioners allegedly did not report for Federal Income Tax purposes. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioners as to the nature and source of these alleged taxable interest income, and the Commissioner is in error as all interest income was reported in the returns filed by the petitioners for the calendar years 1963, 1964 and 1965.

(e). In his notice of deficiency herein, the respondent determined that petitioners realized unreported taxable income in the amount of $11,584.09 for the taxable year ending December 31, 1963, and the amount of $22,653.24 for the taxable year ending December 31, 1964, and the amount of $25,601.86 for the taxable year ending December 31, 1965, represented by unexplained deposits. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioners as to the nature or source ofthese unexplained deposits. The

Commissioner is in error in determining that bank deposits are unreported taxable income, when in fact all deposits may represent capital. All taxable income for the years 1963, 1964 and 1965 were reported by Petitioners.

(f). In his notice of deficiency herein, the respondent determined that petitioners realized taxable commission income in the amount of $258.39 for the calendar year ending December 31, 1963, $227.39 for the calendar year ending December 31, 1964, and $261.31 for the calendar year ending December 31, 1965. In this, the Commissioner is in error, as all income was reported by the Petitioners for the calendar years, 1963, 1964 and 1965.

(g). In his notice of deficiency herein, the respondent determined that petitioners realized capital gains income in the sum of $40.14 for the taxable year ending December 31, 1963, the sum of $1,160.36 for the calendar year ending December 31, 1964, and the sum of $18,716.81 for the taxable year ending December 31, 1965. The Commissioner in his statement attached to the notice of deficiency herein, failed to advise petitioners as to the nature and source of these alleged capital gains, and the Commissioner is in error as all taxable income for the calendar years 1963, 1964 and 1965 were reported by petitioners.

(h). In his notice of deficiency herein, the respondent determined that petitioners realized business income in the amount of $6,039.81 for the calendar year ending December 31, 1963, the sum of $933.87 for the calendar year ending December 31, 1964, and for the sum of $812.00 for the calendar year ending December 31, 1965, which petitioners allegedly did not report for Federal income tax purposes. The Commissioner in his statement attached to the notice of deficiency herein, failed to advise petitioners as to the nature and sources of these alleged sums for business income, and the Commissioner is in error as all taxable income for the calendar years 1963, 1964 and 1965 were reported by the petitioners.

(i). In his notice of deficiency herein, the respondent determined that the itemized deductions of $1,440.75 for the taxable year ending December 31, 1963, the itemized deductions of $1,589.67 for the taxable year ending December 31, 1964, and the itemized deductions for the taxable year ending December 31, 1965, in the sum of $1,959.45 be disallowed, and the Commissioner has only allowed the standard deduction in the sum of $1,000.00 for each of the taxable years in question. In the return filed for the taxable year ending December 31, 1963, your petitioners itemized the following deductions:

Contributions:	$649.00	
Taxes	731.75	
New York City Retail Sales Tax	60.00	
Total		$1,440.75

In the return filed for the taxable year ending December 31, 1964, your petitioners itemized the following deductions:

Contributions -	$696.00	
Taxes	895.67	
Total		$1,589.67

In the return filed for the taxable year ending December 31, 1965, your petitioners itemized the following deductions:

Contributions:	$771.00	
Taxes	1171.31	
Interest expense	17.14	
Total		$1,959.45

The Commissioner is in error in disallowing the foregoing items, as Petitioners are entitled under the law to those itemized deductions.

(j). In his notice of deficiency herein, respondent determined that the deductions for business expenses under Schedule "C" of the returns filed by the petitioners for the taxableyear 1963 in the sum of $2,967.31, for the taxable year 1964 in the sum of $2,631.16, and for the taxable year 1965 in the sum of $3,754.45 be not allowed because in the opinion of the respondent it has not been established that the amounts disallowed represent ordinary and necessary expenses for the purposes designated. The Commissioner in his statement attached to the notice of deficiency herein failed to advise petitioners the business expenses disallowed. The Commissioner arbitrarily and in error disallowed the necessary business expenses in the conduct of petitioners' business for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965.

(k). Petitioners filed their income tax returns for the taxable years ending December 31, 1963, December 31, 1964, and for the taxableyear ending December 31, 1965, and the respondent's determination and assessment of deficiency in income taxes for the said taxable years are barred by the Statute of Limitations provided in Section

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6501 et seq. United States Code, Title 26, Internal Revenue Code.

(l). The Respondent, Commissioner of Internal Revenue is guilty of laches. The Commissioner with notice of all of the acts of the petitioners set forth in the notice of deficiency dated September 15, 1972, refrained from sending a notice of deficiency and assessment until September 15, 1972, for deficiency of taxes allegedly due for the taxable years 1963, 1964and 1965, all to the prejudice of the petitioners.

(m). Petitioner, FRANK L. SILVERMAN, was charged by the respondent with income tax evasion as a criminal offense in the United States District Court, Southern District of New York, for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965, and the attempted collection, by the respondent, Commissioner of Internal Revenue of these alleged deficiency for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965 has place petitioner FRANK L. SILVERMAN in double jeopardy and violated his constitutional rights.

(n). The burden of proof in respect of the imposition of 50% penalties being upon respondent, the petitioner, FRANK L. SILVERMAN, makes no allegation in regard thereto, except as stated in Paragraph 4(n) herein.

WHEREFORE, petitioners pray that this Court may hear this proceeding, that it determine that there are no deficiency herein, and to vacate and set aside and declare null and void the determination of the Commissioner of Internal Revenue dated September 15, 1972, which fixed the tax deficiency as to Petitioner, FRANK L. SILVERMAN, in the sum of $9,621.42 and the fraud penalty of $4,810.71 making a total deficiency in the sum of $14,432.13 for the taxable year ending December 31, 1963, and which fixed a tax deficiency in the sum of $12,437.66 and the fraud penalty of $6,218.83, making a total deficiency in the sum of $18,656.49 for the taxable year ending December 31, 1964, and which fixed a tax deficiency in the sum of $23,678.20 and the fraud penalty of $11,839.10 making a total deficiency in the sum of $35,517.30 for the taxable year ending December 31, 1965, and to vacate and set aside and declare null and void the determination of the Commissioner of Internal Revenue which fixed the tax deficiency as to Petitioner, ANNA SILVERMAN, in the sum of $9,621.42 for the taxable year ending December 31, 1963, in the sum of $12,437.66 for the taxable year ending December 31, 1964, and in the sum of $23,678.20 for the taxable year ending December 31, 1965, and the Court grant all proper and just and equitable relief in the premises.

Frank L. Silverman

FRANK L. SILVERMAN

Anna Silverman

ANNA SILVERMAN

FRANK L. SILVERMAN,
Attorney for Petitoners -
Office & P. O. Address,
258 Broadway,
New York, N. Y.

STATE OF NEW YORK,)
COUNTY OF NEW YORK.) ss:

FRANK L. SILVERMAN and ANNA SILVERMAN, being duly sworn, depose and say: that they are the Petitioners above named, and that the foregoing Petition was read by them, and that they are familiar with the statements contained therein, and that those statements contained therein are true, except as to those matters stated to be upon information and belief, and as to those matters they believe it to be true.

Frank L Silverman
FRANK L. SILVERMAN

Anna Silverman
ANNA SILVERMAN

Subscribed and sworn to before
me, this 8th day of December, 1972.

Arthur Klein

ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138885
Qualified in Queens County
My commission expires Mar. 30, 1973

UNITED STATES TAX COURT

FRANK L. SILVERMAN and ANNA SILVERMAN,)
Petitioners,)
v.)
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

A-151

Docket No. 9004-72

FILED
1973 FEB 12 PM 3 22
UNITED STATES
TAX COURT

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1., 2., and 3. Admits the allegations of paragraphs 1, 2, and 3 of the petition.

4. (a). to (n),. inclusive. Denies that the respondent erred as alleged in subparagraphs (a). to (n), inclusive of paragraph 4 of the petition.

5. (a). and (b). Admits that petitioners are residents of New York, New York, and that Frank L. Silverman was employed by the Workmen's Compensation Board of the State of New York during the calendar years 1963, 1964 and 1965 and that in addition, Frank L. Silverman conducted an office for the practice of law. Denies the remaining allegations of subparagraphs (a). and (b). of paragraph 5 of the petition.

(c) Admits that in his notice of deficiency, the respondent, Commissioner of Internal Revenue, determined that petitioners realized additional taxable dividend income in the amount of $3,570.77 for the taxable year ending December 31, 1963 additional taxable dividend income in the amount of $3,618.33 for the taxable year ending December 31, 1964, and additional taxable dividend income in the amount of $5,709.70 for the taxable year ending December 31, 1965 which were not reported for Federal Tax purposes.

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Denies the remaining allegations of subparagraph (c). of paragraph 5 of the petition.

(d). Admits that in his notice of deficiency, the respondent, determined that petitioners realized taxable interest in the amount of $765.16 in the year ending December 31, 1963, in the amount of $875.57 for the year ending December 31, 1964, and in the amount of $728.58 for the year ending December 31, 1965, which petitioners allegedly did not report for Feder Income Tax purposes. Denies the remaining allegations of subpararaph (d). of paragraph 5 of the petition.

(e). Admits that in his notice of deficiency, the respondent determined that petitioner realized unreported taxable income in the amount of $11,584.09 for the taxable year ending December 31, 1963, and the amount of $22,653.24 for the taxable year ending December 31, 1964, and the amount of $25,601.86 for the taxable year ending December 31, 1965, represented by unexplained deposits. Denies the remaining allegations of subparagraph (e). of paragraph 5 of the petition.

(f). Admits that in his notice of deficiency, the respondent determined that petitioners realized taxable commission income in the amount of $258.39 for the calendar year ending December 31, 1963, $227.39 for the calendar year ending December 31, 1964 and $261.31 for the calendar year ending December 31, 1965. Denies the remaining allegations of subparagraph (f). of paragraph 5 of the petition.

(g). Admits that in his notice of deficiency, the respondent determined that petitioners realized capital gains in the sum of $40.14 for the taxable year ending December 31, 1963, the sum of $1,160.36 for the taxable year ending December 31, 1964, and the sum of $18,716.81 for the taxable year ending December 31, 1965. Denies the remaining allegations of subparagraph (g). of paragraph 5 of the petition.

(h). Admits that in his notice of deficiency, the respondent determined that petitioners realized business income in the amount of $6,039.81 for the calendar year ending December 31, 1963, the sum of $933.87 for the calendar year ending December 31, 1964 and for the sum of $812.00 for the calendar year ending December 31, 1965, which petitioners allegedly did not report for Federal income tax purposes. Denies the remaining allegations of subparagraph (h). of paragraph 5 of the petition.

(i). Admits that in his notice of deficiency, the respondent determined that the itemized deductions of $1,440.75 for the taxable year ending December 31, 1963, the itemized deductions of $1,589.67 for the taxable year ending December 31, 1964, and the itemized deductions for the taxable year ending December 31, 1965, in the sum of $1,959.45 be disallowed, and the Commissioner had only allowed the standard deduction in the sum of $1,000.00 for each of the taxable years in question. Denies the remaining allegations of subparagraph (i). of paragraph 5 of the petition.

(j). Admits that in his notice of deficiency, the respondent determined that the deductions for business expenses under Schedule "C" of the returns filed by the petitioners for the taxable year 1963 in the sum of $2,967.31, for the taxable year 1964 in the sum of $2,631.16, and for the taxable year 1965 in the sum of $3,754.45 be not allowed because in the opinion of the respondent it has not been established that the amounts disallowed represent ordinary and necessary expenses for the purpose designated. Denies the remaining allegations of subparagraph (j). of paragraph 5 of the petition.

(k) Admits that petitioners filed their income tax returns for the taxable years ending December 31, 1963, December 31, 1964, and for the taxable year ending December 31, 1965. Denies the remaining allegations of subparagraph (k). of paragraph 5 of the petition.

(l). Denies the allegations of subparagraph (l). of paragraph 5 of the petition.

(m). Admits that petitioner, FRANK L. SILVERMAN, was charged with income tax evasion as a criminal offense in the United States District Court, Southern District of New York, for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965. Denies the remaining allegations of subparagraph (m). of paragraph 5 of the petition.

(n). Denies the allegations of subparagraph (n). of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

7. FURTHER ANSWERING the petition, and in support of the determination that a part of the underpayments of tax required to be shown in the petitioners' income tax returns for the taxable years 1963, 1964, and 1965 are due to fraud respondent affirmatively relies upon the doctrine of collateral estoppel (estoppel by judgment), and alleges:

(a) Frank L. Silverman, the petitioner herein is the same person who was the defendant in the criminal case of United States v. Frank L. Silverman, (S.D.N.Y. 1970), Docket No. 68 CR 336.

(b) The respondent herein is a party in privity with the United States of America, the prosecuting party in the aforesaid criminal case in which the petitioner herein was the defendant.

(c) The indictment filed on April 10, 1968, in said criminal case sets forth the following charge against the defendant, the petitioner herein:

"The Grand Jury charges:

THIRD COUNT

> "On or about the 8th day of April, 1964, in the Southern District of New York, FRANK L. SILVERMAN, the defendant, who during the calendar year 1963 was married, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1963 by preparing and causing to be prepared and by filing and causing to be filed with the District Director of Internal Revenue for the Manhattan District, New York, New York, a false and fraudulent income tax return on behalf of himself and his wife wherein it was stated that their taxable income for said calendar year was the sum of $8,872.70

whereas, as he then and there well knew, their taxable income for the said calendar year was the sum of $19,275.23, upon which taxable income there was due and owing to the United States of America income tax of $4,732.61.

(Title 26, United States Code, Section 7201)

FOURTH COUNT

The Grand Jury further charges:

On or about the 30th day of March, 1965, in the Southern District of New York, FRANK L. SILVERMAN, the defendant, who during the calendar year 1964 was married, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1964 by preparing and causing to be prepared and by filing and causing to be filed with the District Director of Internal Revenue for the District of Manhattan, New York, New York, a false and fraudulent income tax return on behalf of himself and his wife wherein it was stated that their taxable income for said calendar year was the sum of $10,739.27, and that the amount of income tax due and owing thereon was $2,032.69, whereas, as he than there well knew, their taxable income for the said calendar year was the sum of $17,311.47, upon which taxable income there was due and owing to the United States of America an income tax of $3,736.48.

(Title 26, United States Code, Section 7201)

FIFTH COUNT

The Grand Jury further charges:

On or about the 12th day of April, 1966, in the Southern District of New York, FRANK L. SILVERMAN, the defendant, who during the calendar year 1965 was married, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1965 by preparing

> and causing to be prepared and by filing and causing to be filed with the District Director of Internal Revenue for the District of Manhattan, New York, New York, a false and fraudulent income tax return on behalf of himself and his wife wherein it was stated that theeir taxable income for said calendar year was the sum of $10,593.28, and that the amount of income tax due and owing thereon was $1,950.52, as he then and there well knew, their taxable income for the said calendar year was the sum of $31, 862.65, upon which taxable income there was due and owing to the United States of America an income tax of $8,606.43."
>
> (Title 26, United States Code, Section 7201)

(d) The petitioner entered a plea of not guilty to the charge set forth against him in said indictment.

(e) On December 10, 1970, after a trial on the merits before a jury, the jury in said case rendered its verdict finding the petitioner guilty of violating the provisions of Int. Rev. Code of 1954, § 7201 as charged in said indictment.

(f) Said United States District Court on April 2, 1971, entered its judgment pursuant to said verdict.

(g) Among the issues of fact presented, litigated and determined in the aforesaid criminal case were whether Frank L. Silverman, the defendant therein, and the petitioner herein, did in fact willfully file false and fraudulent income tax returns for the taxable years 1963, 1964, and 1965 with intent to evade and defeat income taxes, and whether he did in fact by such means understate a part of the income taxes due and owing by him to the United States of America for said years.

(h) The petitioner, Frank L. Silverman, as the defendant in said criminal case, presented evidence and argument bearing on the issues of whether he did willfully file false and fraudulent income tax returns for the taxable years 1963, 1964, and 1965 with intent to evade and defeat taxes, and whether due to such fraud his correct income tax liabilities were understated in the income tax returns filed by him for said years.

(i) Findings of fact that the petitioner did willfully file false and fraudulent income tax returns for the taxable years 1961 and 1962 with intent to evade and defeat taxes, that there were due to such fraud underpayments of the correct income taxes due and owing by the petitioner for said years were essential to support the jury verdict rendered and the judgment of conviction entered in said case.

(j) One of the issues in the instant case is whether the addition to the tax imposed by Int. Rev. Code of 1954, § 6653(b) should be imposed against the petitioner for the taxable years 1963, 1964, and 1965.

(k) Said issue in the instant case is the same as the issue which was presented, litigated and determined adversely to the petitioner in the aforesaid criminal case to the extent that both the imposition of the additions to the taxes against the petitioner for the taxable years 1963, 1964, and 1965 under Code, § 6653(b), and said judgment of conviction of the petitione for violation of Code, § 7201, are each dependent upon findings that the petitioner for said years did in fact file false and fraudulent income tax returns and that by reason of such fraud there are for said years underpayments of income taxes.

(l) The prior criminal conviction of the petitioner under Code, § 7201 for the taxable years 1963, 1964, and 1965 is conclusive and binding on the petitioner, and by reason thereof the petitioner is estopped in the instant case, under the doctrine of collateral estoppel (estoppel by judgment), from denying herein that he willfully filed false and fraudulent income tax returns for the taxable years 1963, 1964, and 1965 with intent to evade and defeat a part of the income tax due and owing by him for said years, and that due to such fraud there are for said years underpayments of taxes within the meaning of Code, § 6653(b).

(m) By reason of such prior criminal convction, the petitioner is estopped in the instant case, under the doctrine of collateral estoppel (estoppel by judgment), from denying that a part of the underpayments of income taxes for the taxable years 1963, 1964, and 1965 are due to fraud, and that therefore, the petitioner is liable for the additions to the tax imposed by Int. Rev. Code of 1954, § 6653(b), as determined by the respondent in the statutory notice, upon which notice the instant case is based.

8. STILL FURTHER ANSWERING the petition, and as a defense to the assignment of error that the statute of limitations bars the assessment and collection of the deficiencies in income taxes due from the petitioner for the taxable years 1963, 1964, and 1965, the respondent alleges:

a) The income taxes due from the petitioner for the taxable years 1963, 1964, and 1965 may be assessed, or a proceeding in Court for the collection of such tax may be begun without assessment, at any time under the provisions of Code, § 6501(c)(1), since the petitioner filed false or faudulent income tax returns for said years with intent to evade tax, as is more fully set forth by the facts set forth in paragraph 7, above, which facts are incorporated herein by reference and relied upon by the respondent as a defense to the statute of limitations.

WHEREFORE, it is prayed:

(1) That the relief sought in the petition be denied;

(2) That the deficiencies in income taxes for the taxable years 1963, 1964, and 1965, as set forth in the statutory notice, be in all respects approved;

(3) That the additions to the taxes for the taxable years 1963, 1964, and 1965 under the provisions of Int. Rev. Code of 1954, § 6653(b), as set forth in the statutory notice, be in all respects approved;

(4) That the Court determine that, for the taxable years 1963, 1964, and 1965, the petitioner is estopped under the doctrine of collateral estoppel (estoppel by judgment), from denying his liability for the additions to the taxes imposed by Code, § 6653(b); and

(5) That the Court determine that the assessment and collection of the deficiencies in income taxes for the taxable years 1963, 1964, and 1965 are not barred by the statute of limitations.

(Sgd) LEE H. HENKEL, JR. - EHH

LEE H. HENKEL, JR.,
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
MICHAEL A. MENILLO,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

UNITED STATES TAX COURT

FRANK L.SILVERMAN and ANNA SILVERMAN,)
)
)
Petitioners,)
)
v.) Docket No.9004-72
)
)
COMMISSIONER OF INTERNAL REVENUE,)
)
)
Respondent.)

PETITIONERS' REPLY TO THE ANSWER OF THE RESPONDENT

The Petitioners in reply to the material facts alleged in the answer of the Respondent, respectfully allege:

1. Admit the allegations in Paragraph 7(a) of the answer of the Respondent.

2. Deny each and every allegation in Paragraph 7(b) of the answer of the Respondent,except that the United States of America, was the prosecuting party in the criminal case, in which the petitioner,FRANK L.SILVERMAN, was the defendant.

3. Admit the allegations in Paragraph 7(c) of the answer of the Respondent, and respectfully allege that in the indictment filed against petitioner,FRANK L.SILVERMAN, the United States of America, the prosecuting party alleged in the Third Count of the indictment, that the taxable income of the petitioners for the taxable year 1963, was the sum of $19,275.23, upon which taxable income there was due and owing to the United States of America, an income tax in the sum of $4,732.61. In his notice of deficiency for the taxable year 1963, the deficiency asserted by the Respondent for the said taxable year is the sum of $9,621.42.

The indictment further alleges in its Fourth

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Count, that the taxable income of the petitioner, FRANK L. SILVERMAN, for the taxable year 1964, was the sum of $17,311.47, upon which taxable income there was due and owing to the United States of America, an income tax of $3,736.48, and the indictment further alleged that for said calendar year ending December 31, 1964, petitioners paid the sum of $2.032.69. In his notice of deficiency asserted by the Respondent for the taxable year 1964, the deficiency asserted by the Respondent for the said taxable year is the sum of $12,437.66.

The indictment further alleges in its Fifth Count, that the taxable income of the petitioner, FRANK L. SILVERMAN, for the taxable year 1965, was the sum of $31,862.65 upon which taxable income there was due and owing to the United States of America, an income tax of $8,606.43, and the indictment further alleged that for said calendar year ending December 31, 1965, petitioners paid the sum of $1,950.52. In his notice of deficiency asserted by the Respondent for the taxable year 1965, the deficiency asserted by the Respondent for the said taxable year is the sum of $23,678.20.

4. Admit the allegations in Paragraph 7(d) of the answer of the Respondent.

5. Deny each and every allegation in Paragraph 7(e) of the answer of the Respondent, except that after a trial, a jury rendered a verdict of guilty.

6. Admit the allegations in Paragraph 7(f) of the answer of the Respondent.

7. Deny each and every allegation in Paragraph 7(g) of the answer of the Respondent, and respectfully allege that the issues of fact presented to the jury in the aforesaid criminal case, by the Court in its charge was as follows:

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> "There are three elements ofthis offense, each of which the Government must prove beyond a reasonable doubt in order to prove the defendant guilty. They are
>
> (1). That an income tax was due and owing from the defendant for the year in question which was substantially higher than the tax which he reported and paid.
>
> (2) The defendant attempted in some manner to evade or defeat the tax.
>
> (3). The defendant made that attempt wilfully. To attempt to evade or defeat a tax involves both an intent on the part of the defendant to do so, and an affirmative act wilfully done by defendant in furtherance of that attempt.

8. Deny each and every allegation in Paragraph 7(h) of the answer of the Respondent, except that the Petitioner, FRANK L. SILVERMAN, presented evidence on the issues posed by the Court in the criminal proceeding.

9. Deny each and every allegation in Paragraph 7(i) of the answer of the Respondent.

10. Admit the allegations in Paragraph 7(j) of the answer of the Respondent.

11. Deny each and every allegation inParagraph 7(k) of the answer of the Respondent, and respectfully alleges that the conviction for violation of Section 7201 did not depend upon findings that the petitioner, FRANK L. SILVERMAN, did in fact file false and fraudulent income tax returns for the taxable years in question.

12. Deny each and every allegation in Paragraph 7(l) of the answer of the Respondent, and alleges that the doctrine of collateral estoppel is not applicable herein, as the facts and issues are not the same as in the original case.

WHEREFORE, the respondent prays that the Court grant the

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13. Deny each and every allegation in Paragraph 7(m) of the answer of the Respondent.

14. STILL FURTHER REPLYING TO THE ANSWER OF THE RESPONDENT, petitioners allege:

(a). Deny each and every allegation in Paragraph 8(a) of the answer of the Respondent, and respectfully allege that petitioners filed their income tax returns for the taxable years ending December 31, 1963, and for the taxable years ending December 31, 1964, and for the taxable years ending December 31, 1965, and the respondent's determination and assessment of deficiency in income taxes for the said taxable years are barred by the Statute of Limitations provided in Section 6501, et seq. United States Code, Title 26, Internal Revenue Code.

15. As and for additional matter, the petitioners respectfully allege:

That by reason of the fact, that in the indictment filed by the United States of America, it was alleged that the income tax for the year ending December 31, 1963, was the sum of $4,732.61, and that the income tax for the year ending December 31, 1964 was the sum of $3,736.48, and that the income tax for the year ending December 31, 1965, was the sum of $8,606.43, the Respondent is now collaterly estopped from redetermining the amount of taxes for the calendar years 1963, 1964 and 1965.

WHEREFORE, Petitioners respectfully pray:

1. That the relief requested in the petition be granted in all respects, and that the determination of the Commissioner of Internal Revenue, dated, September 15, 1972, be vacated and annulled.

[illegible] G. Silverman

[illegible] SILVERMAN

Anna Silverman

ANNA SILVERMAN

STATE OF NEW YORK,)
COUNTY OF NEW YORK.)

FRANK L. SILVERMAN and ANNA SILVERMAN, both being duly sworn, say: That they are the Petitioners above named, and the foregoing reply was read by them, and that they are familiar with the statements contained therein, and that the statements contained therein are true, except as to those matters stated upon information and belief, and that as to those matters they believe it to be true.

FRANK L. SILVERMAN

Anna Silverman
ANNA SILVERMAN

Subscribed and sworn to
before me, this 15 day of
March, 1973.

Arthur Klein

ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138805
Qualified in Queens County
My commission expires Mar. 30, 1973

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UNITED STATES
TAX COURT
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UNITED STATES TAX COURT

FRANK L. SILVERMAN and ANNA SILVERMAN,)
)
Petitioners,)
)
v.) Docket No. 9004-72
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

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AMENDMENT TO ANSWER

THE RESPONDENT, for amendment to the answer filed in the above-entitled case, amends paragraphs 5(c)., 5(e). and 5(g). to read as follows:

5(c). Admits that in his notice of deficiency, the respondent, Commissioner of Internal Revenue, determined that petitioners realized additional taxable dividend income in the amount of $3,570.77 for the taxable year ending December 31, 1963, additional taxable dividend income in the amount of $3,618.33 for the taxable year ending December 31, 1964, and additional taxable dividend income in the amount of $5,709.70 for the taxable year ending December 31, 1965 which were not reported for Federal Tax purposes. Denies the remaining allegations of subparagraph (c). of paragraph 5 of the petition. Alleges that the following schedule represents the additional taxable dividend income for the taxable years 1963 to 1965, inclusive:

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Dividends Received

Paying Corporation	1963	1964	1965
Acme Missile & Construction Corp.	-0-	-0-	-0-
American & Foreign Power Corp., Inc.	$ 512.00	$ 578.00	$ 800.00
Associated Food Stores, Inc.	100.00	100.00	200.00
American Standard	420.00	75.00	-0-
Ashland Oil & Refing Co.	-0-	-0-	-0-
Atlas Credit Corp.	4.23	5.06	311.00
Baldwin-Lima-Hamilton Corp.	480.00	480.00	360.00
Braniff Airways, Inc.	250.00	100.00	100.00
The Budd Company	157.50	180.00	325.00
Charles Pfizer & Co., Inc.	-0-	-0-	-0-
Crescent Petroleum Corp.	375.00	375.00	375.00
Crucible Steel Co. of America	400.00	450.00	600.00
Daitch Crystal Dairies, Inc.	-0-	48.00	48.00
Detroit Steel Corporation	180.00	180.00	180.00
Federal Pacific Electric Co.	-0-	-0-	-0-
International Telephone & Telegraph	420.00	441.00	504.00
Kingston Products Corp.	300.00	300.00	300.00
National Malleable & Steel Castings Co.	220.00	357.00	168.00
Pan American World Airlines, Inc.	800.00	1,200.00	1,200.00
Pennsylvania Railroad Co.	200.00	500.00	800.00
Pittsburgh Coke & Chemical Co.	84.00	80.00	80.00
Republic Pictures Corp.	400.00	400.00	400.00
Ronson Corporation	-0-	-0-	-0-
Schenley Industries, Inc.	432.00	432.00	396.50
Sheller Manufacturing Corp.	260.00	205.00	210.00
Standard Packaging Corp.	240.00	-0-	-0-
Stix, Baer and Fuller Co.	-0-	-0-	-0-
Terminal-Hudson Electronics, Inc.	-0-	-0-	-0-
Textron	467.34	531.65	600.25
United Air Lines, Inc.	17.00	55.52	64.77
Universal Marion Corp.	250.00	343.75	375.00
The Grand Union Co.	121.20	125.10	130.50
Pacific Nutrient & Chemical Co.	54.00	27.00	27.00
Sparton Corporation	120.00	145.00	200.00
Avnet Electronics Corp.	-0-	102.00	191.88
David & Dash, Inc.	-0-	11.00	14.00
Merritt Chapman Scott Corp.	120.00	-0-	160.00
Armour & Co.	-0-	-0-	312.60
Eastern Stainless Steel Corp.	-0-	-0-	90.00
Ford Motor Company	-0-	-0-	55.00
General Aviline & Film Corp.	-0-	-0-	30.00
McCrory Corp.	-0-	-0-	25.00
Midland-Ross Corp.	-0-	-0-	225.62

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Paying Corporation	1963	1964	1965
Trust Company of New Jersey	-0-	-0-	$ 117.0
Zenith Laboratories, Inc.	-0-	-0-	10.0
Abbott Laboratories, Inc.	-0-	-0-	12.5
Anglo Lautaro Nitrate	$ 210.00	$ 270.00	510.0
Riegel Paper Corp.	-0-	-0-	69.0
Alex Forst & Sons, Inc.	-0-	120.00	90.0
Vanadium Corp.	40.00	50.00	300.0
Heyden Newport Chemical Corp.	-0-	-0-	-0-
Total Dividends	$7,574.27	$8,267.08	$10,967.
Dividends Reported	3,953.50	4,548.75	5,058.
§116 Dividend exclusion	50.00	100.00	100.
Unreported Dividends	3,570.77	3,618.33	5,709.

5(e). Admits that in his notice of deficiency, the respondent determined that petitioner realized unreported taxable income in the amount of $11,584.09 for the taxable year ending December 31, 1963, and the amount of $22,653.24 for the taxable year ending December 31, 1964, and the amount of $25,601.86 for the taxable year ending December 31, 1965, represented by unexplained deposits. Denies the remaining allegations of subparagraph (e). of paragraph 5 of the petition. Alleges that the following schedule represents the unreported taxable income for the taxable years 1963 to 1965, inclusive, as represented by unexplained deposits:

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ANALYSIS OF DEPOSITS

MERCHANTS BANK OF N.Y.

Source	Regular-Spec.	Regular	Silverman & Silverman	Total
1963				
Total Deposits	$24,028.86	$2,283.93	-0-	$26,312.8
Eliminations:				
Professional Receipts	$18,490.50	$1,815.50		$20,306.0
Dividends	1,428.19	220.00		1,648.1
Salary	317.09			317.0
Total	$20,235.78	$2,035.50	-0-	$22,271.2
Unidentified Deposits	$ 3,793.08	$ 248.46	-0-	$ 4,041.5
1964				
Total Deposits	$10,202.95	$ 425.00	$8,205.93	$18,833.8
Eliminations:				
Professional Receipts	$ 2,658.26	$ 150.00	$4,050.00	$ 6,858.2
Dividends	3,116.43	25.00	214.50	3,355.9
Salary	1,450.71			1,450.7
Total	$ 7,255.40	$ 175.00	$4,264.50	$11,664.9
Unidentified Deposits	$ 2,977.55	$ 250.00	$3,941.43	$ 7,168.9
1965				
Total Deposits	$13,349.63	-0-	$51,360.10	$64,709.7
Eliminations:				
Professional Receipts	$ 1,000.00		$ 564.30	$ 1,564.3
Dividends	2,563.25		1,290.35	3,853.6
Salary	3,075.17			3,075.1
Stock Tender			42,931.04	42,931.0
Total	$ 6,638.42	-0-	$44,785.69	$51,424.1
Unidentified Deposits	$ 6,711.21	-0-	$ 6,574.71	$13,285.6

ANALYSIS OF DEPOSITS

	East River Savings Bank	Emigrant Industrial Sav.		Chase Manhattan	First National City	Franklin Society	
Source	#65075	#1551318	#1563753	Sav. #14500	Sav. #0420213	#781521	Total
1963							
Total Deposits	-0-	$3,456.77	$8,877.41	$8,456.22	$1,742.18	$1,717.40	$24,249.98
Eliminations:							
Salary		$1,679.57	$ 639.03	$3,069.96	$1,308.68	$ 653.60	$ 7,350.84
Dividends		455.00	795.75	1,363.80	318.50	708.80	3,641.85
Stock Tender			5,700.00	2,312.50			8,012.50
Total	-0-	$2,289.57	$7,134.78	$6,746.26	$1,627.18	$1,362.40	$19,005.19
Unidentified Deposits	-0-	$1,167.20	$1,742.63	$1,709.96	$ 115.00	$ 355.00	$ 5,244.79
1964							
Total Deposits	$5,415.78	$2,585.83	$1,383.93	$8,731.39	$8,956.68	$3,667.02	$30,742.53
Eliminations:							
Salary	$4,077.06	$ 642.54	$ 727.60	$ 659.03	$ 762.66	$1,471.93	$ 8,340.82
Dividends		105.00	115.00	382.20	869.70	750.00	2,221.90
Professional Fees		500.00					500.00
Bond Interest					6,869.31		6,869.31
Stockbrokers						1,312.69	1,312.69
Bank Transfers							
Total	$4,077.06	$1,247.54	$ 842.60	$1,041.23	$8,501.67	$3,534.62	$19,244.72
Unidentified Deposits	$1,338.72	$1,338.29	$ 543.33	$7,690.16	$ 454.91	$ 132.40	$11,497.91

ANALYSIS OF DEPOSITS

Source	Emigrant Industrial Sav.		Chase Manhattan	First National City	Franklin Society	Total
	#1551318	#1563753	Sav. #14500	Sav. #0420213	#781521	
1965						
Total Deposits	$2,728.04	$2,374.63	-0-	$3,635.03	$939.31	$9,967.01
Eliminations:						
Salary	$ 439.31	$ 439.31		$1,250.68	$439.31	$2,568.61
Dividends	1,399.53	762.43		1,394.33	500.00	4,056.29
Professional Fees				225.00		225.00
Total	$1,838.84	$1,201.74	-0-	$2,870.01	$939.31	$6,849.90
Unidentified Deposits	$ 908.42	$1,172.89	-0-	$ 765.02	-0-	$2,827.11

ANALYSIS OF DEPOSITS

Source	American Savings Bank #289166	American Savings Bank #290166	Seamen's Bank #1435944	Broadway Savings #253020	Manhattan Savings Bank #103687	Manhattan Savings Bank #537020	South Bklyn. Savings #606708	Bankers Trust #2070	Total
1963									
Total Deposits	$239.23	$150.00	-0-	$1,301.74	-0-	-0-	-0-	$ 30.00	$1,720.70
Eliminations:									
Salary								$ 30.00	$993.53
Dividends	$239.23			$ 724.30					
Stockbrokers									
Total	$239.23	-0-	-0-	$ 724.30	-0-	-0-	-0-	$ 30.00	$ 993.53
Unidentified Deposits	-0-	$150.00	-0-	$ 577.17	-0-	-0-	-0-	-0-	$ 727.17
1964									
Total Deposits	$240.98	$325.00	$1,475.15	-0-	-0-	$177.20	$193.75	$ -0-	$2,412.08
Eliminations:									
Salary						$ 96.00	$193.75		$1,152.65
Dividends	$ 31.95	$100.00	$ 730.95						
Stockbrokers			744.20						744.20
Total	$ 31.95	$100.00	$1,475.15	-0-	-0-	$ 96.00	$193.75	-0-	$1,896.85
Unidentified Deposits		$225.00	-0-	-0-	-0-	$ 81.20	-0-	-0-	$ 306.20

ANALYSIS OF DEPOSITS

Source	American Savings Bank #289166	American Savings Bank #290166	Seamen's Bank #1435944	Broadway Savings #253020	Manhattan Savings Bank #103687	Manhattan Savings Bank #537020	South Bklyn. Savings #606708	Bankers Trust #2070	Total
1965									
Total Deposits	$50.00	$310.00	$1,757.24	-0-	$2,114.51	$320.02	$1,292.29	$1,004.00	$6,848.06
Eliminations:									
Salary			$1,757.24		$ 434.51	$320.02	$1,166.29		$3,678.06
Dividends	$50.00	$150.00					126.00	$ 679.00	1,005.00
Return of Rent Security								100.00	100.00
Total	$50.00	$150.00	$1,757.24	-0-	$ 434.51	-0-	$1,292.29	$ 779.00	$4,783.0
Unidentified Deposits	-0-	$160.00	$ -0-	-0-	$1,680.00	-0-	-0-	$ 225.00	$2,065.00

ANALYSIS OF DEPOSITS

Source	C.B. Richards & Co.	Linder Bilotti & Co.	S.C. Burns & Co., Inc.	Reynolds & Co.	Granger & Co.	Thomson & McKinnon	E.F. Hutton & Co.	Total
				#30-8595-97	#69570	#24-078-10347	#17-08332	
1963								
Total Deposits	$ 9,536.22	$1,787.50	$1,650.00	-0-	-0-	-0-	-0-	$12,973.72
Eliminations:								
Bank Transfers	$ 7,965.63	$1,787.50	$1,650.00	-0-	-0-	-0-	-0-	$11,403.13
Total	$ 7,965.63	$1,787.50	$1,650.00	-0-	-0-	-0-	-0-	$11,403.13
Unidentified Deposits	$ 1,570.59	-0-	-0-	-0-	-0-	-0-	-0-	$1,570.59
1964								
Total Deposits	$25,893.29	-0-	-0-	$12,065.38	$2,236.00	-0-	-0-	$40,194.67
Eliminations:								
Bank Transfers	$25,893.29			$ 8,385.13	$2,236.00			$36,514.42
Total	$25,893.29	-0-	-0-	$ 8,385.13	$2,236.00	-0-	-0-	$36,514.42
Unidentified Deposits	-0-	-0-	-0-	$ 3,680.25	-0-	-0-	-0-	$ 3,680.25
1965								
Total Deposits	$14,522.50	-0-	-0-	$21,685.42	$3,278.25	$2,612.50	$2,187.50	$44,286.17
Eliminations:								
Bank Transfers	$ 8,485.00			$16,168.93	$3,000.00	$2,612.50	$2,187.50	$32,453.93
Other Brokers				4,408.11				4,408.11
Total	$ 8,485.00	-0-	-0-	$20,577.04	$3,000.00	$2,612.50	$2,187.50	$36,862.04
Unidentified Deposits	$ 6,037.50	-0-	-0-	$ 1,108.38	$ 278.25	-0-	-0-	$ 7,424.13

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5(g). Admits that in his notice of deficiency, the respondent determined that petitioners realized capital gains in the sum of $40.14 for the taxable year ending December 31, 1963, the sum of $1,160.36 for the taxable year ending December 31, 1964, and the sum of $18,716.81 for the taxable year ending December 31, 1965. Denies the remaining allegations of subparagraph (g). of paragraph 5 of the petition. Alleges that the following schedule represents the unreported capital gain for the taxable year 1963 to 1965, inclusive:

SCHEDULE OF CAPITAL GAINS AND LOSSES

Shares	Security	Date Acquired	Cost	Date Sold	Selling Price	Short Term Gain (or loss)	Long Term Gain (or loss)
1963							
300	American Standard Corp.	3-23-59	$ 4,764.39	10-7-63	$ 5,700.00		$ 935.61
125	Pittsburgh Coke & Chemical Co.	12-8-55 1-27-56	3,072.46	11-18-63	2,312.50		(759.96)
							$ 175.65
LTCG	$175.65						
1/2	87.82						
Corrected	$ 87.83						
Reported	47.69						
Adj.	$ 40.14						
1964							
500	Southern Equitable Life Insurance Co.	4-10-63	1,787.50	5-14-64	$ 1,994.20		$ 206.70
300	American Standard Corp.	8-7-59 9-16-59	4,401.89 4,75[illegible].39	4-28-64	6,869.31		2,467.42
200	Air Balance, Inc.	10-31-61	1,000.00	12-8-64	334.88		(665.12)
300	Aceto Chemical Co., Inc.	3-21-62	1,912.50	12-9-64	410.09		(1,502.41)
							$ 506.59
LTCG	$ 506.59						
1/2	253.30						
Corrected	$ 253.29						
Reported	(907.07)						
Adj.	$1,160.36						

SCHEDULE OF CAPITAL GAINS AND LOSSES

1965 Shares	Security	Date Acquired	Cost	Date Sold	Selling Price	Short Term Gain (or loss)	Long Term Gain (or loss)
500	Terminal Hudson Electronics, Inc.	8-14-59	$2,500.00	12-27-65	$4,408.11		$ 1,908.11
170	Schenley Industries, Inc.	11-14-52 11-29-57	2,816.80	3-1-65	5,431.04		2,614.24
500	Braniff Airways, Inc.	9-11-56 9-19-56 11-24-58	5,512.05	12-9-65	37,500.00		31,987.95
44-1/10	United Airlines Warrants	3-24-59	1,102.50	4-29-65	2,177.07		1,074.57
300	Alex Forst & Sons, Inc.	11-13-63	1,650.00	10-26-65	1,680.00		30.00
2,000	Diversified Collateral Corp.	12-26-61	2,181.25	Bankrupt	-0-		(2,181.25)

LTCG	$37,614.87
LTCL	2,181.25
	$35,433.62
1/2	17,766.81
Corrected	$17,716.81
Reported	(1,000.00)
Adj.	$18,716.81

WHEREFORE, the respondent prays that the Court grant the prayer requested in his original answer.

(Sgd) LAWRENCE B. GIBBS - CCMJr.

LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
MICHAEL A. MENILLO,
Attorney
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

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13223109614

Form 1040 U.S. Individual Income Tax Return 1966

for the year January 1–December 31, 1966, or other taxable year beginning Jan.1st 1966, ending Lec.31st, 1966 U.S. Treasury Department—Internal Revenue Service

Please print or type

First name and initial (If joint return, use first names and middle initials of both): Frank L. and Anna

Last name: Silverman

Your social security number (Husband's, if joint return): 124 20 8156

Home address (Number and street or rural route): 258 Broadway

Your occupation:

City, town or post office, and State: New York, N.Y.

ZIP code: 10007

Wife's number, if joint return:

Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1965 names and addresses.

Wife's occupation:

Your present employer and address: State of N.Y., Abany, New York

Wife's present employer and address, if joint return:

Filing Status—check only one:

1a ☐ Single
1b ☐ Married filing joint return (even if only one had income)
1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.
1d ☐ Unmarried Head of Household
1e ☐ Surviving widow(er) with dependent child

Exemptions

	Regular	65 or over	Blind	Enter number of exemptions checked ▶▶▶
2a Yourself	☒	☐	☐	1
2b Wife	☒	☐	☐	1

3a First names of your dependent children who lived with you .... Enter number ▶▶▶

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed ▶▶▶ 2

Attach Copy B of Form W-2 here

Income If joint return, include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶	15,899.03
	6	Other income (from page 2, Part II, line 8) ▶	3,378.36
	7	Total (add lines 5 and 6)	
	8	Adjustments (from page 2, Part III, line 5) ▶	.09
	9	Total income (subtract line 8 from line 7) ▶	19,277.39
Figure tax by using either 10 or 11	10	Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.	
Tax Computation	11	Tax Rate Schedule—	
	11a	If you itemize deductions, enter total from page 2, Part IV. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately). ▶	2,173.65
	11b	Subtract line 11a from line 9	17,103.74
	11c	Multiply total number of exemptions on line 4, above, by $600	1,200.00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	15,903.74
Tax Credits Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	
	13	Total credits (from page 2, Part V, line 5) ▶	
	14a	Income tax (subtract line 13 from line 12)	
	14b	Tax from recomputing prior year investment credit (attach statement)	
	15	Self-employment tax (Schedule C-3 or F-1) ▶	
	16	Total tax (add lines 14a, 14b, and 15) ▶	3235.94
	17	Total Federal income tax withheld (attach Forms W-2) ▶ 2380.92	
	18	1966 Estimated tax payments (include 1965 overpayment allowed as a credit) ▶	
	19	Excess F.I.C.A. Tax Withheld (two or more employers—see page 5 of inst.) ▶	
	20	Nonhighway Federal gasoline tax—Form 4136, Reg. Inv.—Form 2439	
	21	Total (add lines 17, 18, 19, and 20)	2380.92
Tax Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	855.02
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment ▶▶▶	
	24	Amount of line 23 you wish credited to 1967 Estimated Tax	
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	

Attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ .... Date April 15, 1967
If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here .... Date ....
Signature of preparer other than taxpayer. Address

c59—16—79261-3

Petiti°ners' Exhibit 80
Hune 23, 1976.

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PART I. Exemptions Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $600 or more?	(e) Amount YOU furnished for dependent's support. If 100% write "ALL"	(f) Amount furnished by OTHERS including dependent.
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b . . . . ▶▶

PART II. Income from sources other than wages, etc.

1a Dividends and other distributions on stock (Name of payer—write (H), (W), (J), for stock held by husband, wife, or jointly)

Pan Am. Penn. RR Co. IT&T Bran. Air.
Ford Motor, Crucible Steel Am. F. P.
Sheller Mfg. Am Tel & Tel. Lat. Steel,
Pitts Coke, The Budd Co. Ad. Millis
Ass. Food Stores, Abbot Lab Co.

Total line 1a . . . . ▶▶		7100.41
1b Exclusion (see instructions)	200.00	
1c Capital gain distributions .		
1d Nontaxable distributions .		
1e Total lines 1b, 1c, and 1d		
1f Taxable dividends (line 1a less line 1e—not less than zero) . . . . . . ▶▶		6900.41

2 Interest (name of payer)

2a Earnings from savings and loan assoc., mutual savings banks, credit unions, etc. — 1197.22

Am. Savings Bank F. R. Sav.
Emigrant Sav. 1st Nat.
Fulton Sa etc., Total line 2a

2b Interest on bank deposits (other than mutual savings)

Total line 2b

2c Other interest (bonds, etc.)

Total line 2c

1197

2d Total interest income (lines 2a, 2b, & 2c) ▶▶	8097.61
3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (Sch. B)	
4 Business income (Schedule C)	(4286.14)
5 Sale or exchange of property (Schedule D).	(433.11)
6 Farm income (Schedule F)	
7 Miscellaneous income (state nature)	
Total line 7 ▶▶	
8 TOTAL (add lines 1f through 7. Enter here and on page 1, line 6) . . . . . ▶▶	3378.36

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement) .	
2 Moving expenses (attach Form 3903) . .	
3 Employee business expense (attach Form 2106 or other statement)	
4 Payments by self-employed persons to retirement plans, etc. (attach Form 2950SE) .	
5 TOTAL ADJUSTMENTS (lines 1 through 4). Enter here and on page 1, line 8 . . .	

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 7 of instructions.

PART IV. Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list. If 65 or over see instructions.

1 Total cost of medicine and drugs . . .	
2 Enter 1% of line 9, page 1	
3 Subtract line 2 from line 1	
4 Other medical, dental expenses (include hospital insurance premiums) . . .	
5 Total (add lines 3 and 4)	
6 Enter 3% of line 9, page 1	
7 Subtract line 6 from line 5; see page 8 of instructions for maximum limitation ▶▶	

Contributions.—Cash—including checks, money orders, etc.

(itemize) Mahnoac Temple-96.00, Odd Fel. $25
N.Y. Cunty Com. $100.00, E. Side Heb. Ins,
$25.00, State Rep. Com. 100.00, [illegible]
Ass. $120.00, Heart Fund, Cerebral Palsy
Salvation Army, March of Dimes, $150.00
[illegible] Club $20.00

1 Total cash contributions	616.00
2 Other than cash (see instructions for required statement). Enter total of such items here.	
3 Carryover from prior years (see page 8 of inst.).	
4 Total contributions (add lines 1, 2, and 3—see instructions for limitation) . ▶▶	616.00
Taxes.—Real estate	686.05
State and local gasoline	
General sales (see page 15 of instructions) .	150.00
State and local income	455.75
Personal property	175.00
Total taxes ▶▶	2082.80
Interest expense.—Home Mortgage . . .	
Other (itemize) Savings Bank Interest	
Total interest expense ▶▶	0.55
Miscellaneous deductions.—(see page 9 of instructions)	
Total Miscellaneous ▶▶	
TOTAL DEDUCTIONS (for page 1, line 11a) ▶	2173.55

PART V. Credits

1 Retirement income credit (Schedule B) .	
2 Investment credit (Form 3468) . . .	
3 Foreign tax credit (Form 1116) . . .	
4 Tax-free covenant bonds credit . . .	
5 TOTAL CREDITS (add lines 1 through 4). Enter here and on page 1, line 13 . . .	

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SCHEDULE C
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

Profit (or Loss) From Business or Profession

(Sole Proprietorships)

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1966

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040

Frank L. Silverman-258 Broadway, New York, N.Y.

A Principal business activity .... product Legal services
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B Business name Frank L. Silverman C Employer identification Number 12 1668857

D Business location 258 Broadway, New York, N.Y. 10007
(Number and street or rural route) (City or post office and State) (ZIP code)

E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

1	Gross receipts or gross sales $ 1004.26 Less: Returns and allowances $		$ 1004.26
2	Inventory at beginning of year (if different than last year's closing inventory attach explanation)		
3	Merchandise purchased $ ......, less cost of any items withdrawn from business for personal use $		
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6		
8	Inventory at end of this year		
9	Cost of goods sold (line 7 less line 8)		
10	Gross profit (subtract line 9 from line 1)		1004.26
	OTHER BUSINESS DEDUCTIONS		
11	Depreciation (explain in Schedule C-2)		
12	Taxes on business and business property (explain in Schedule C-1)		
13	Rent on business property	780.00	
14	Repairs (explain in Schedule C-1) see schedule attached	1827.19	
15	Salaries and wages not included on line 4 (exclude any paid to yourself)	827.25	
16	Insurance		
17	Legal and professional fees		
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)	* 1855.96	
25	Other business expenses (explain in Schedule C-1) see schedule attached*		
26	Total of lines 11 through 25		5290.40
27	Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on page 2, Part II, line 4, Form 1040		(4286.14)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
C1-L14	See Schedule attached.	1827.19			$
C-1 L25	See Schedule attached.	1855.96			

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FRANK L.SILVERMAN
S.S.No.124-20-8156
Schedule C-1:Line 14

1961 Olds, depreciated in 1965 to $825.00

Depreciated in 1956(1961 Olds) - - - - - - - - - - - - - -	$412.50
Liability Insurance Car - - - - - - - - - - - - - - - - - -	143.44
Repair of car-1966 -	211.10
Rent of car(garage) - - - - - - - - - - - - - - - - - - -	320.90
Gas & Oil,etc., -	365.25
Tolls -	65.00
Car wash -	125.00
Parking Meters -	55.00
Miscellaneous disbursements - - - - - - - - - - - - - - -	75.00
Transportation -	55.00
Total	$1827.19

SCHEDULE (C-1);Line 25

N.Y.County Lawyers Association - - - - - - - - - - - - -	$ 50.00
Stenographic services - - - - - - - - - - - - - - - - - -	135.00
Postage -	125.00
Telephone services - - - - - - - - - - - - - - - - - - -	190.06
Telephone answering services - - - - - - - - - - - - - - -	257.40
Referee Association dues - - - - - - - - - - - - - - - -	25.00
Printing & Stationery, etc., - - - - - - - - - - - - - - -	225.00
Law Periodicals, etc., - - - - - - - - - - - - - - - - -	175.00
Entertainment of clients - - - - - - - - - - - - - - - -	350.00
Process servicer -	48.50
Miscellaneous disbursements - - - - - - - - - - - - - - -	175.00
Petty Cash -	100.00
Total	$1855.96

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SCHEDULE D
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

Gains and Losses From Sales or Exchanges of Property

Attach this schedule to your income tax return, Form 1040

1966

Name and address as shown on page 1 of Form 1040

Part I—CAPITAL ASSETS—Short-term capital gains and losses—assets held not more than 6 months

a. Kind of property and how acquired (see instructions for symbols to indicate how acquired—for example, use "B" for stock acquired by exercise of stock option or by employee stock purchase plan)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Depreciation allowed (or allowable) since acquisition	f. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale	g. Gain or loss (d plus e less f)
1						

2 Enter your share of net short-term gain (or loss) from partnerships and fiduciaries . . . .

3 Enter unused short-term capital loss carryover from preceding taxable years (attach statement) . . . . .

4 Net short-term gain (or loss) from lines 1, 2, and 3 . . . . •

Long-term capital gains and losses—assets held more than 6 months (12 months or more for certain livestock)

5 Enter gain from Part II, line 3 . . . .

Schedule D Attached						

Total long-term gross sales price . . [illegible]

6 Enter the full amount of your share of net long-term gain (or loss) from partnerships and fiduciaries	($40,695.50
7 Enter unused long-term capital loss carryover from preceding taxable years (attach statement)	
8 Capital gain dividends . . . . See Schedule attached	(40,262.13
9 Net long-term gain (or loss) from lines 5, 6, 7, and 8 . . . . •	Loss (433.11
10 Combine the amounts shown on lines 4 and 9, and enter the net gain (or loss) here	Loss (433.11
11 If line 10 shows a GAIN—Enter 50% of line 9 or 50% of line 10, whichever is smaller. (Enter zero if there is a loss or no entry on line 9.) (See reverse side for computation of alternative tax)	
12 Subtract line 11 from line 10. Enter here and in Part IV, line 1, on reverse side	
13 If line 10 shows a LOSS—Enter here and in Part IV, line 1, the smallest of the following: (a) the amount on line 10; (b) the amount on page 1, line 11b, Form 1040, computed without regard to capital gains and losses; or (c) $1,000 . . •	Loss (433.11)

Part II—GAIN FROM DISPOSITION OF DEPRECIABLE PROPERTY UNDER SECTIONS 1245 AND 1250—assets held more than 6 months (see instructions for definitions)

Where double headings appear, use the first heading for section 1245 and the second heading for section 1250.

a. Kind of property and how acquired (if necessary, attach statement of descriptive details not shown below—write 1245 or 1250 to indicate type of asset)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, cost of subsequent improvements (if not purchased, attach explanation) and expense of sale
1				

f. Depreciation allowed (or allowable) since acquisition		g. Adjusted basis (e less sum of f-1 and f-2)	h. Total gain (d less g)	i. Ordinary gain (lesser of f-2 or h) — OR — (see instructions)	j. Other gain (h less i)
f-1. Prior to January 1, 1962 — OR — Prior to January 1, 1964	f-2. After December 31, 1961 — OR — After December 31, 1963				

2 Total ordinary gain. Enter here and in Part IV, line 2, on reverse side . . . . •

3 Total other gain. Enter here and in Part I, line 5; however, if the gains do not exceed the losses when this amount is combined with other gains and losses from section 1231 property enter the total of column j in Part III, line 1 . .

Re: Schedule D, Line 5

	Date Acquired*	Date Sold	Sales Price	Cost	Profit
500 Braniff Air.	4/17/45-56 - -	-1-2-66	$37500.00	$7237.87	$30,262.13
200 Pen.R.R.Co.	11/1/55-56 - -	12-13-66	$10725.96	$5017.31	$ 5,708.65
100 Acme Missles	8/5/60 - - -	-1/27/66	$ 1920.46	$ 714.00	$ 1,206.46
100 Acme Missles	7/6/60- - - -	1/12/66	$ 4160.65	$1074.50	$ 3,086.15
			$54306.07	$14043.68	$40,262.39
2000 Equity Sav.& Loan-	5/4/61 --	11/17/66	None - - -	$11250.00	Loss(11250.00)
1000 National Capital-	10/24/61-	11/18/66	None- - - -	4500.00	Loss(4500.00)
500 Sta-Brite - - -	9/26/61 -	11/17/66	None - - -	-2000.00	Loss(2000.00)
500 Crown Self-Service	3/28/61-	11/18/66	$.50.- - -	2875.00	LOss(2874.50)
2000 Rese Industries --	5/8/64 -	11/18/66	$17.00 - -	1260.00	Loss(1243.00)
6000 World Wide Realty Formerly Lefcourt Realty)	2/28/61-62-	11/18/66	$585.00- -	-5973.75	Loss(5388.75)
600 Diverco Inc. Formerly Swimming Pool Dev.	7/28/60-61-	11/18/66	$19.50-	2746.25	Loss(2726.75)
000 Diverzified Col.Corp.	1/17/62-61	11/18/66	None-	-11712.50	Loss(10712.50)
			Loss - - - - - - - -		($40,695.50)

RECAPITULATION LOSS $ 40,695.50
PROFIT $ 40,262.39
LOSS (433.11)

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A-186

1

F.L.Silverman
258 Broadway
New York,N.Y.10007

12 1668857

Type or print EMPLOYER'S identification number, name, and address above.

WAGE AND TAX STATEMENT 1966

Copy A—For District Director

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION	
Federal income tax withheld	Wages [1] paid subject to withholding in 1966	Other compensation [2] paid in 1966	F.I.C.A. employee tax withheld [3]	Total F.I.C.A. wages paid in 1966
None		827.25	None	None.

Type or print EMPLOYEE'S social security number →

Morris Schaeffer
28-09 Seagirt Boulevard
Far Rockaway, N.Y.

Type or print EMPLOYEE'S name and address above.

[1] Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

[2] This block is for use in reporting salary or other compensation which was not subject to withholding See Circular E.

[3] One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.

FOR USE OF INTERNAL REVENUE SERVICE

Employee's copy and employer's copy compared . . . . ____________

FORM W-2—U.S. Treasury Department, Internal Revenue Service

EMPLOYER: See instructions on back of copy D.

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	Docket No. 3506-68

MOTION FOR FURTHER AND BETTER STATEMENT IN ANSWER AND TO STRIKE.

THE PETITIONER MOVES, pursuant to the provisions of Rule 17(c) (1) of the Tax Court Rules of Practice that the Court enter an order striking the allegations in the answer of the Respondent in paragraphs 5(e), 7(g) and 7(h) and requiring the Respondent to file a further and better statement of facts upon which the Respondent relies to sustain the allegations in paragraphs 5(e), 7(g) and 7(h) of the answer, upon which the burden of proof is upon the petitioner, and

THE PETITIONER FURTHER MOVES, pursuant to the provisions of Rule 17(c) (3) of the Tax Court Rules of Practice that upon failure of the Respondent to amend his pleading in accordance with such order, the Court strike from the answer the allegations in paragraphs 5(e), 7(g) and 7(h) and the purported allegations of fact in paragraph 7(h) (1), 7(h0(2,) 7(h) (3) 7(h0 (4)and 7(h) (5) and to limit the trial and determination of this case to the issues of whether the petitioner is liable for deficiencies arising from the determination of additional income other than bank deposits as shown in the notice of deficiency.

IN SUPPORT THEREFO, the Petitioner respectfully shows unto the Court :

1. In the statutory notice of deficiency dated June 6, 1968, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income taxes for the taxable year 1960, in the amount set forth in the notice of deficiency, a copy of which is attached to the petition, as Exhibit "A". In the statement attached to the notice of deficiency in paragraph (c) thereof, the Respondent stated: "It is determined that you realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers accounts deposits as shown on Schedule "A" attached, the source of which were not verified or explained."

2. Schedule "A" which it is alleged to be attached was never received by the Petitioner and in those circumstances petitioner was not in a position to comment and analyze this alleged schedule.

3. In his answer, paragraph 5(e) the Respondent admits that the respondent determined that petitioner realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers accounts deposited.

4. In his only statement of facts upon which respondent relies is paragraph 7(h) (1), in which respondent states as follows:

(h). The taxable income of the petitioner for the taxable year 1960 is as follows:

(1). During the taxable year 1960, petitioner maintained personal checking and savings accounts and made deposits in such accounts as follows:

Source	Merchants Bank of N.Y.		East River Savings Bank		Emigrant Savings Bank		Total
1960	Regular	Special	#3374	#37218	#1,551,318	#1,563,753	
Total Deposits	21,004.46	9,281.35	1,744.32	16,725.00	1,000.00	364.38	50,119.51
Less: Dividends	1,420.35	2,444.10					3,864.45
Notes Discounted		2,990.56					2,990.56
Stock Broker			1,744.32				1,744.32
Net Unidentified Deposits -							41,520.18

5. The allegations set forth in Paragraph 7(h) (5) of the answer of the Respondent, does not contain a clear and concise statement of facts, as to the alleged unidentified deposits, as required by the Tax Court Rules of Practice.

6. The Respondent should be required by this Court to file a further and better statement of facts relied upon by the Respondent especially as to the alleged unidentified bank deposits. Said further and better statement should include at least specific allegations of fact with respect to the following items:

(a) As to the total deposits in Merchants Bank of New York. Regular Account - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(b). As to the total deposits in Merchants Bank of New York. Special Account - The date or dates of each deposit. The amount of each deposit, and the amount or amountsof such deposits as is claimed by the Respondent to be income, and subject to tax.

(c). As to the total deposits in East River Savings Bank - #3374 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(d). As to the total deposits in East River Savings Bank - #37218 - The date or dates of each deposit. The amount of each deposit, and the amount or amountsof such deposits as is claimed by the Respondent to be income, and subject to tax.

(e). As to the total deposits in Emigrant Savings Bank, #1,551,318. - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(f). As to the total deposits in Emigrant Savings Bank, #1,563,753 - The date or dates of each deposit. The amount of each deposit, and the amount or amountsof such deposits as is claimed by the Respondent to be income.

7. It is respectfully submitted that the mere making of a bank deposit does not prove the receipt of taxable income. (Goe v. Commissioner - 198 F. 2nd 851, (C.A. 3rd), cert denied 344 U.S. 897; Merten - Law of Federal Income Taxation - Volume 2 - Section 12.12, Page 72, and cases therein cited), and that in order for the Petitioner to properly meet this issue, it is necessary that Petitoner be advised as to all bank deposits claimed by the Commissioner to be income.

WHEREFORE, it is prayed:

(1). That the Court enter an order striking the allegations in the answer of the Respondent in Paragraphs 5(e), 7(g) and 7(h) of the answer.

(2). That the Court enter an order requiring the Respondent to file an amended answer containing a further and better statement of the facts relied upon in the answer in paragraphs 5(e), 7(g) and 7(h) of the answer;

(3). That upon the failure of the

Respondent to comply with such order that the Court strike from the answer of the Respondent the allegations in Paragraphs 5(e), 7(g) and 7(h) and the purpoerted allegations of fact in paragraphs 7(h)(1), 7(h)(2), 7(h) 3, 7(h) (4) and 7(h) 5 and to limit the trial and determination of this case to the issues of whether the petitioner is liable for deficiencies arising from the determination of additional income taxes other than the bank deposits as shown in the notice of deficiency.

/s/
FRANK L. SILVERMAN

FRANK L. SILVERMAN,
Attorney for Petitioner-Pro Se
Office & P. O. Address,
258 Broadway,
New York, N.Y.

Sworn to and subscribed this
8 day of January, 1973.

ARTHUR KLEIN
Notary Public, State of New York
No. [illegible]
Qualified in Queens County
My [illegible] 1973

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TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3506-68

MEMORANDUM OF LAW SUBMITTED ON BEHALF OF PETITIONER IN SUPPORT OF MOTION FOR FURTHER AND BETTER STATEMENT IN ANSWER AND TO STRIKE.

STATEMENT

This memorandum of law is submitted in lieu of personal appearance for motion calendered for hearing by the Court on February 28, 1973, in Courtroom No.2, Room 2142, 1111 Constitution Avenue, N. W. Washington, D. C. as petitioner cannot appear because of the distance from the office of the petitioner, 258 Broadway, New York, N.Y. to the Courthouse in Washington, D. C.

FACTS.

In the statuory notice of deficiency dated June 6, 1968, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income tax for the taxable year, 1960, represented by bank deposits and brokers accounts according to a schedule allegedly attached to the notice of deficiency. This schedule was never received by petitioner.

In his answer, the Respondent admits that the respondent determined that petitioner realized unreported taxable income in the amount of $48,113.18, represented by bank deposits and broker accounts deposited. (Paragraph 5(e) Respondent's Answer).

In his statement of fact, the respondent states (Paragraph 7 (1) Respondent's answer), that petitioner maintained personal and checking accounts and made the following deposits: Merchants Bank of New York - Regular - Total deposits, 1960, $21,004.46; Special - Total deposits, 1960 - $9,281.35; East River Savings Bank - Book #3374 - Total deposits- $1,744.32; Book # 37218 - Total deposits - $16,725.00 Emigrant Savings Bank - Book # 1,551,318 - Total deposits- $1,000.00; Book #1,563,753 - Total deposits - $364.38; Total - $50,119.51.

It is respectfully submitted that the Respondent should file a further and better statement of fact relied upon by the Respondent especially as to the alleged unidentified bank deposits. The further and better statement should include the following items:

(a). As to the total deposits in Mervhants Bank of New York - Regular Account - The date or dates of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be taxable income.

(b). As to the total deposits in Merchants Bank of New York - Special Account - The date or dates of each deposit, and the amount or amounts of such deposits as is claimed by the Responent to be taxable income.

(c). As to the total deposits in East River Savings Bank - #3374 - The date or dates of each deposit, and the amount or amounts claimed by the Respondent to be taxable income.

(d). As to the total deposits in East River Savings Bank - #37218- The date or dates of each deposit, and the amount or amounts claimed by the Respondent to be taxable income.

(e). As to the total deposits in Emigrant Savings Bank - #1,551,318. The date or dates of each deposit and the amount or amounts claimed by the Respondent to be taxable income.

(f). As to the total deposits in Emigrant Savings Bank - #1,563,753 - The date or dates of each deposit and the amount or amounts claimed by the Respondent to be taxable income.

It is respectfully submitted that for the petitioner to meet the burden of overcoming the presumption of the correctness of Respondent's determination , it is essential that the Commissioner of Internal Revenue advise this Court and the petitioner each and every deposit that the Respondent claims to be taxable income.

ARGUMENT

It is elementary that the mere making of a bank deposit does not prove the receipt of taxable income. (Merten - Law of Federal Income Taxation - Volume 2 - Section 12.12 Page 72), or as was said in Coe v. Commissioner 198 F. 2nd 851, (C.A. 3rd), cert, denied, 344 Un. S. 897, at page 852:

> "He (the taxpayer) reasons first and correctly that proof of bank deposits standing alone does not establish the receipt of income."

In O'Dwyer v. C.I.R. 266 F. 2nd 575, at page 588, (C.A. 4th), the rule as to bank deposits is stated as follows:

> "Taxpayers argue that an isolated bank deposit, standing alone is not enough to show the receipt of income, and charge that the determination of the Commissioner that the $1500.00 deposit represented taxable income was arbitrary and capricious. * * *
> The Tax Court had no information or evidence before it as to the source or nature of either deposit, but it was confronted with the presumption of correctness attaching to the Commissioner's determination that the particular deposit represented taxable income. The Tax Court stated: "The petitioners have not sustained their burden of overcoming this presumption. They intorduced no evidence or testimony. They seemed content to rely on the fact that the $1500.00 was deposited in a joint bank account. * * *. In the absence of some evidence that the $1500.00 did not represent taxable income, we must sustain the respondent's determination in this regard.
> All taxpayers had to do in order to overcome the presumption of correctness was to make some reasonable explanation as to the source and nature of the deposit in question. The presumption existed, the Commissioner's determination was prima facia correct and the burden was upon the taxpayers in theTax Court to overcome this presumption. See, Hoelfe v. Commissioner - 6 Cir. 1949 - 114 F. 2nd 713.

In order to meet the test laid down in O'Dwyer, supra, and to make a reasonable explanation as to the source and nature of the "unexplained deposits", it is essential that petitioner be advised which alleged "unexplained deposits" are claimed by the Respondent to be taxable income.

It should be noted in passing, that these bank deposits were allegedly made in the taxable year 1960, some twelve or thirteen years ago.

In Estate of Gladys Horwitz - TC Memo 1965, 269, the issue was, whether the funds used by Gladys Horwitz to make certain bank deposits and stock purchases constituted taxable income to her in 1960, said this Court:

> "While proof of bank deposits and stock purchases standing alone does not establish the receipt of taxable income, the surrounding circumstances, may, and often will indicate that an inference of taxable income is the proper one to be drawn from such proof. (See, Gore v. Commissioner - 198 F. 2nd 851 -42 AFTER 555 C.A. 3rd), affirming a Memorandum opinion of this Court, certorari denied, 314 U.S. 897 - 1952), Hague Estate v. Commissioner - 132 F. 2nd 775 (30 AFTR 686) (CA 2nd , affirming 45 B.T.A. 104, cert. denied, 318 U. S. 787 (1943); Respondent's determination that Gladys realized taxable income is presumptively correct and petitioner has the burden of proving it to be erronous. Hague v. Commissioner, supra. Respondent contends that petitioner has failed to carry this burden. * * *
>
> It is the petitioner's theory that the funds used by Gladys to make the "unecplained " bank deposits and stock purchases came from a cash hoard accumulated prior to 1960, and kept in a safe deposit box. * * * Glady's was an extreme miser. She began renting a safe deposit box at a New York City bank, in 1948, only a few years after she had begun keeping company with the man who over 15 years was to confer upon her pecuniary benefits more than sufficient to cover her living expenses. She and her brother jointly had rented a safe deposit box in Detroit; on October 8, 1956, a few days after her brother died, Glady's visited this box and emptied it of its contents, shortly thereafter she discontinouned her old safe-deposit box, and soon rented another box twice the size of theold one. All of the nearly $37,000, which the respondent determined to be income appeared in the form of cash, during the first 4 months of 1960; well over one half of this amount was either deposited at or used to buy bank checks from the same bank where Gladys had her safe deposit box. The evidence established with a fair degree of certainity that cash from the safe deposit box was used to buy the bank check which paid for at least oneof the "unexplained" stock purchases, the 13 shares of A.T.&T bought on April 26. Andthe discovery of $703 cash in the safe-deposit

> box after her death confirmed the Gladys was in the habit of using the box as a cash repository.
>
> In our view, the foregoing evidence is sufficient to establish at least prima facie, that the funds used by Gladys was to make the "unexplained" bank deposits and stock purchases came from cash accumulated prior to 1960, and kept in a safe deposit box. * * *
>
> Accordingly, we hold that petitioner has carried its burden of proving error in respondent's determination that such deposits and purchases constituted taxable income to Gladys in 1960.

At bar, it is apparent that the Respondent in making his determination of "unexplained deposits" took deposits made by petitioner in the year 1960, in both the commercial and savin-gs banks, and labeled all deposits taxable income. The Respondent should break down each deposit claimed as taxable income, in order that petitioner may check the nature and source of each deposit in question.

CONCLUSION

THIS COURT SHOULD ENTER AN ORDER REQUIRING THE RESPONDENT TO FILE AN AMENDED ANSWER CONTAINING A FURTHER AND BETTER STATEMENT OF FACTS RELIED IN THE ANSWER IN PARAGRAPHS 5(e), 7(g) and 7(h) of THE ANSWER, AND FOR SUCH OTHER AND FURTHER RELIEF AS TO THIS COURT MAY SEEM NECESSARY IN THE PREMISES.

RESPECTFULLY SUBMITTED,

FRANK L. SILVERMAN,
Attorney for Petitioner Pro Se.
Office & P. O. Address,
258 Broadway,
New York, N. Y.

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A-199

UNITED STATES TAX COURT
WASHINGTON

FRANK L. SILVERMAN Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No. 3506-68

ORDER

This case was called from the calendar for the motions session on April 11, 1973, at Washington, D.C., for hearing on petitioner's motion for further and better statement in answer and amendment to answer and to strike filed March 12, 1973. No appearance was made by or on behalf of the petitioner. However, petitioner's memorandum of law filed March 28, 1973 was before the Court. The motion was argued by counsel for respondent. After due consideration, and for cause appearing in the transcript of the proceedings this date, it is

ORDERED that petitioner's motion filed March 12, 1973, is denied.

(Signed) Bruce M. Forrester

Judge

Dated: Washington, D.C.
April 11, 1973

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3506-68

MOTION FOR FURTHER AND BETTER STATEMENT IN ANSWER and AMENDMENT TO ANSWER AND TO STRIKE

THE PETITIONER MOVES, pursuant to the provisions of Rule 17(c) (1) of the Tax Court Rules of Practice that the Court enter an order striking the allegations in the answer of the Respondent in paragraphs 5(e), 7(g) and 7(h) and requiring the Respondent to file a further and better statement of facts upon which the Respondent relies to sustain the allegations in paragraphs 5(e), 7(g) and 7(h) of the answer, and the amendment to the answer, upon which the burden of proof is upon the petitioner, and

THE PETITIONER FURTHER MOVES, pursuant to the provisions of Rule 17(c) (3) of the Tax Court Rules of Practice that upon failure of the Respondent to amend his pleadings in accordance with such order, the Court strike from the answer and the amended answer the allegations in paragraphs 5(e), 7(g) and 7(h) and the purported allegations of fact in paragraphs 7(h) (1), 7(h)(2), 7(h) (3), 7(h) (4) and 7(h) (5), and to limit the trial and determination of this case to the issues of whether the petitioner is liable for deficiencies arising from the determination of additional income other than bank deposits as shown in the notice of deficiency.

IN SUPPORT THEREOF, the Petitioner respectfully shows unto the Court:

1. In the statutory notice of deficiency dated June 6, 1968, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income taxes for the taxable year 1960, in the amount set forth in the notice of deficiency, a copy of which is attached to the petition as Exhibit " A". In the statement attached to the notice of deficiency in paragraph (c) thereof, the Respondent stated: "It is determined that you realized unreported taxable income in the amount of $48,113.18, represented by bank deposits and brokers accounts deposits as shown on Schedule "A" attached, the source of which were verified or explained."

2. Schedule "A" which it is alleged to be attached was never received by the Petitioner, and in those circumstances petitioner was not in a position to comment and analyze this alleged schedule.

3. In his answer, paragraph 5(e) the Respondent admits that the respondent determined that petitioner realized unreported taxable income in the amount of $48,113.18 represented by bank deposits and brokers accounts deposited.

4. Petitioner heretofore moved for a further and better statement and filed same with the Clerk of this Court on January 11, 1973, which motion was set down for argument on the Calendar for motions at Wahington D. C. for February 28, 1973.

5. On February 18, 1973, the Respondent filed an amendment to the answer amending paragraph 7(h)(1) of his answer, and on February 20, 1973, an order was made and entered by Hon. C. Moxley Featherston, Acting Chief Judge, denying said motion for

for the reason that the Respondent filed an amended answer.

6. In his only statement of facts upon which respondent relies is paragraph 7(h) (1) of the amended answer in which respondent states as follows:

THE RESPONDENT, for amendment to the answer filed in the above entitled case, amends paragraph 7(h) (1) to read as follows:

(h). The taxable income of the petitioner for the taxable year 1960 is as follows:

(1). During the taxable year 1960, petitioner maintained personal checking and savings accounts and made deposits in such accounts as follows: (See, Schedule "A" attached hereto). As can be seen from this Schedule, the Respondent maintains that in the taxable year 1960, petitioner made the following deposits, which the Respondent claims are unidentified deposits: Merchants Bank of New York, Regular - $21,004.46; Special - $9,281.35; East River Savings Bank, Book Number 3374 - $1,744.32; Book Number 37218- $16,725.00; Emigrant Savings Bank - Book Number 1,551,318 - $1,000.00, Book Number 1,663,751 - $364.38 - Total $50,119.51. The Respondent in its schedule states that after deducting dividends of $3,864.45, notes discounted in the sum of $2,990.56 and stock broker in the sum of $1,744.32, left a net unidentified deposits of $41,520.18.

7. The allegations set forth in Paragraph 7(h) (1), and 7(h)(3) of the amendment to the answer, and Paragraph 7(h)(5) of the answer of the respondent does not contain a clear and concise statement of facts, as to the alleged unidentified deposits, as required by the Tax Court Rules of Practice.

8. The Respondent should be required by this Court to file a further and better statement of facts relied upon by the Respondent especially as to the alleged unidentified bank deposits. Said further and better statement should include at least specific allegations of fact with respect to the following items:

(a). As to the total deposits in the Merchants Bank of New York. Regular Account - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(b). As to the total deposits in Merchants Bank of New York. Special Account - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(c). As to the total deposits in East River Savings Bank - #3374 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(d). As to the total deposits in East River Savings Bank - #37218 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(e). As to the total deposits in Emigrant Savings Bank - #1,551,318 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(f). As to the total deposits in Emigrant Savings Bank - $1,563,753 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income.

9. It is respectfully submitted that the mere making of a bank deposit does not prove the receipt of taxable income. (Coe v. Commissioner - 198 F. 2nd 851, (C.A.3rd), cert. denied, 344 U. S. 897; Merten - Law of Federal Income Taxation - Volume 2 - Section 12.12, Page 72, and cases therein cited), and that in order for the Petitioner to properly meet this issue, it is necessary and essential that Petitioner be advised as to all bank deposits claimed by the Commissioner to be income, and taxable.

WHEREFORE, it is prayed:

(1). That the Court enter an order striking the allegations in the answer and amended answer of the Respondent in Paragraphs 5(e), 7(g) and 7(h).

(2). That the Court enter an order required the Respondent to file a further amended answer containing a further and better statement of the facts relied upon in the answer and the amended answer in paragraphs 5(e), 7(g) and 7(h).

3. That upon the failure of the Respondent to comply with such order that the Court strike from the answer and the amended answer of the Respondent the allegations in Paragraphs 5(e), 7(g) and the allegations in Baragraph 7(h), and the purported allegations of fact in paragraphs 7(h)(1), 7(H) (2), 7(h) (3), 7(h) (4), and 7(h) (5) and to limit the trial and determination of this case to the issues of whether the

petitioner is liable for deficiencies arising from the determination of additional income taxes other than the bank deposits as shown in the notice of deficiency.

/s/

FRANK L. SILVERMAN.

FRANK L. SILVERMAN,
Attorney for Petitioner - Pro Se
Office & P. O. Address,
258 Broadway,
New York, N. Y.

Sworn and subscribed this
8th day of March, 1973.

ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138805
Qualified in Queens County
My commission expires Mar. 30, 1977

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TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket No. 3506-68
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

MEMORANDUM OF LAW SUBMITTED ON BEHALF OF PETITIONER IN SUPPORT OF MOTION FOR BILL OF PARTICULARS.

STATEMENT.

This memorandum of law is submitted in support of petitioner's motion for an order directing the respondent to serve and file a Bill of Particulars as to the items requested in the notice of motion for a Bill of Particulars. This motion has been calendered for a hearing on May 30, 1973, in Courtroom No. 2, Washington D. C.

FACTS

In the statutory notice of deficiency dated June 6, 1968, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income tax for the taxable year 1960, represented by bank deposits and brokers accounts according to a schedule allegedly attached to the notice of deficiency. This schedule was never received by the petitioner.

In his answer, the Respondent alleges that the petitioner realized unreported taxable income in the amount of $43,113.18, represented by bank deposits and broker accounts deposited. (Paragraph 5(e) Respondent's answer).

In his statement of fact, the Respondent states (Paragraph 7(1) Respondent's amended answer), that petitioner maintained personal and checking accounts and made the following deposits: Merchants Bank of New York - Regular - Total deposits - 1960 - $21,004.46; Special - Total deposits - 1960 - $9,281.35; East River Savings Bank Book #3374 - Total deposits - $1,744.32; Book #37218- Total deposits - $16,725.00; Emigrant Savings Bank- Book #1,551,318 - Total deposits -$1,000.00; Book # 1,563,753 - Total deposits - $364.38; Total- $50,119.51.

It is respectfully submitted that the Respondent file a Bill of Particulars as to the items requested in the motion for the Bill of Particulars, especially as to the alleged unidentified bank deposits. The Bill of Particulars should include the following items:

(a). As to the total deposits in the Merchants Bank of New York - Regular account - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(b). As to the total deposits in the Merchants Bank of New York - Special account - The date or dates of each deposit, and the amount or amounts such deposits as is claimed by the Respondent to be income and subject to tax.

(c). As to the total deposits in East River Savings Bank - Book #3374 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income and subject to tax.

(d). As to the total deposits in East River Savings Bank - Book #37218 - The date or dates of each deposit. The amount of each deposit, and the amount or amounts of each deposit as is claimed by the Respondent to be income and subject to tax.

(e). As to the total deposits in Emigrant Savings Bank - Book #1,551,318 - The date or dates of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

(f). As to the total deposits in Emigrant Savings Bank - Book #1,563,753 - The date or dates of each deposit, and the amount or amounts of such deposits as is claimed by the Respondent to be income, and subject to tax.

It is respectfully submitted that for the petitioner to meet the burden of overcoming the presumption of correctness of Respondent's determination, it is necessary and essential that the Commissioner of Internal Revenue, advise this Court and the petitioner of each and every deposit which the Respondent claims are unidentified deposits, and thus taxable income. The "unidentified" deposits were allegedly made during the taxable year 1960, some thirteen years ago.

ARGUMENT

In Merten's Law of Federal Income Taxation - (Vol. 9 - Zimet Revision - Section 50.48 - Page 132, it is stated that one of the typical motions that may be made in the Tax Court is a motion for a bill of particulars, citing Tax Court Rules, No. 18 and 17(c) (1).

In George M. Still, Inc., v. Commissioner - 10 TCM 537, CCH Dec. 18,360 - Docket No. 25744 (1951), this Court on its own motion stated:

> "The pleadings require clarification. Therefore under Rule 18 of the Court Rules, the Court on its own motion orders the petitioner to clarify its pleading so as to allege clearly (1) whether or not its income should include for the fiscal year ended July 31, 1945, proceeds from sales in the amount of $30,015.64 and (2) whether or not the petitioner is entitled to deduction for the same amount and for what reason."

One of the purposes of the Rules of this Court is to bring about an orderly, fair and time-conserving disposition of the issues. Furthermore, the taxpayer is entitled to know what the facts are upon which the Commissioner relies to prove that the "unidentified" deposits are income, and therefore taxable.

In Grace Licavoli v. Commissioner - 15 T.C.M. 862 - Docket No. 58055 -58057 (1956), this Court said at page 864:

> "Furthermore, the taxpayer is entitled to know what the facts are upon which the Commissioner relies to prove fraud so that he can prepare his defense and not be taken by surprise, and it is essential that the facts be pleaded in sufficient detail that each allegation may be admitted or denied and the area of disagreement as to the facts reduced in that fashion to a minimum, thus conserving the time, effort and expense of

> all concerned including the Court. This is particularly true in Tax Court pleadings, since no discovery or pre-trial procedure is expressly provided under which the taxpayer might gain the same information which is sought here".

The purpose of a bill of particulars is to enable a litigant to obtain from his adversary pertinent details of such adversary's claim that will prevent him against surprise and give notice of the real issues tendered. (Walling v. West Virginia Pulp & Paper Co. 2 FRD 416; Young v. Kason-Walsh-Atkinsin-Kior Co. 33 F. Supp. 358; Nordman v. City of Johnson City - I FR Serc. 12e).

At bar, the Commissioner alleges that the petitioner made unexplained deposits in the taxable year 1960 in various banks. In order to meet his burden, the petitioner is entitled to a complete breakdown of each and every deposit which the Commissioner claims is an "unidientifed" deposit.

It is elementary that the mere making of a ba[illegible] deposit does not prove the receipt of taxable income. (Merten - Law of Federal Income Taxation- Vol. 2 - Section 12.12 Page 72), or as said in Coe v. Commissioner- 198 F. 2nd 851, (C.A. 3rd) cert. denied, 344 U. S. 897, at page 851:

> "He (the taxpayer) reasons first and correctly that proof of bank deposits standing alone does not establish the receipt of income."

In O(Dwyer v. C.I.R. 266 F. 2nd 575, at page 588 (C.A. 4th), the rule as to bank deposits is stated as follows:

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> "Taxpayers argue that an isolated bank deposit, standing alone is not enough to show the receipt of income, and charge that the determination of the Commissioner that the $1500.00 deposit represented taxable income was arbitrary and capricious. * * * The Tax Court had no information or evidence before it as to the source or nature of either deposit, but it was confronted with the presumption of correctness attaching to the Commissioner's determination that the particular deposit represented taxable income. The Tax Court stated: "The petitioners have not sustained their burden of overcoming this presumption. They introduced no evidence or testimony. They seemed content to rely on the fact that the $1500.00 was deposited in a joint bank account * * *. In the absence of some evidence that the $1500.00 did not represent taxable income, we must sustain the respondent's determination in this regard.
>
> All taxpayers had to do in order to overcome the presumption of correctness was to make some reasonable explanation as to the source and nature of the deposit in question. The presumption existed, the Commissioner's determination was prima facia correct and the burden was upon the taxpayer in the Tax Court to overcome this presumption. (See Hoelfe v. Commissioner 6 Circ. 1949 - 114 F. 2nd 713).

In order to meet the test laid down in O'Dwyer, supra, and to make a reasonable explanation as to the source and nature of the unexplained deposits, it is necessary and essential that petitioner, as the taxpayer, be advised which "unexplained deposits" are alleged to be taxable income.

It should be noted in passing, that these alleged "unexplained deposits" were made in the taxable year 1960, some thirteen years ago.

In Estate of Gladys Horwitz - TC Memo 1965, 269, this Court held that the petitioner had carried its burden of proving that bank deposits were not taxable income.

At bar, it is apparent that the Respondent in making his determination of "unexplained deposits" took deposits made by the petitioner in the taxable year, 1960, in both the commercial and savings banks, and labeled all deposits taxable income. The Respondent should break down each deposit claimed as taxable income, in order that the petitioner may check the nature and source of each deposit in question.

Since, the burden of proof to show that the Commissioner's determination was erronous is on the petitioner, it is respectfully submitted that unless petitioner is advised of the exact nature of each deposit claimed to be taxable income, it will be impossible for the petitioner to meet his burden.

CONCLUSION

THIS COURT SHOULD ENTER AN ORDER
REQUIRING THE RESPONDENT TO SERVE
AND FILE A BILL OF PARTICULARS
AS TO THE ITEMS REQUESTED, AND FOR
SUCH OTHER AND FURTHER RELIEF AS TO
THIS COURT MAY SEEM NECESSARY IN THE
PREMISES.

RESPECTFULLY SUBMITTED,

FRANK L. SILVERMAN,
Attorney for Petitioner -
Pro Se
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A-213

UNITED STATES
TAX COURT
FILED
MAY 21 1973

UNITED STATES TAX COURT

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket No. 3506-68
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

NOTICE OF OBJECTION

THE RESPONDENT OBJECTS to the granting of petitioner's motion for bill of particulars.

IN SUPPORT THEREOF, the respondent respectfully shows unto the Court:

1. The petition herein was filed with the Tax Court on July 15, 1968. Respondent's answer was filed on November 29, 1968.

2. On January 11, 1973 petitioner filed a motion for further and better statement in answer and to strike. In response to petitioner's motion, respondent filed an Amendment to Answer on February 16, 1973.

3. Petitioner's motion was made relative to the respondent's determination that petitioner realized unreported taxable income represented by bank deposits and deposits in brokers' accounts.

4. Taken together, respondent's Answer and Amendment to Answer set forth the total deposits made by petitioner in bank accounts and brokerage accounts during the year 1960. Respondent's Answer and Amendment to Answer also identify and set forth those deposits which respondent has determined to be nontaxable. Accordingly, with the exception of the deposits identified as nontaxable, it is respondent's determination that all other deposits represent taxable income.

5. It is respondent's determination that all deposits except those specifically identified as nontaxable, represent taxable income.

6. On March 12, 1973, the petitioner filed a motion for further and better statement in answer and amendment to answer and to strike. Said motion was similar in content to petitioner's motion previously filed on January 11, 1973.

7. The motion filed on March 12, 1973 was called for hearing on the motions session at Washington, D.C. on April 11, 1973. The motion was argued by counsel for respondent.

After due consideration and for cause appearing in the transcript of the proceedings the Court ordered that the petitioner's motion be denied.

8. The petitioner's Motion for Bill of Particulars, filed April 30, 1973 is similar in nature and content to the motions for further and better statement previously filed by the petitioner on January 11, 1973 and March 12, 1973.

9. The information requested by the petitioner in his motion for Bill of Particulars is identical to the information requested by petitioner in his previously filed motions which were denied by this Court. Petitioner's motion fails to set forth grounds sufficient to merit the granting thereof.

10. Respondent's Answer and Amendment to Answer are in full compliance with the requirements of Rule 14(b) of the United States Tax Court.

WHEREFORE, it is prayed that petitioner's motion be denied.

(Sgd) LAWRENCE B. GIBBS - [illegible]

LAWRENCE B. GIBBS,
Acting Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

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UNITED STATES TAX COURT

FRANK L. SILVERMAN,)
Petitioner,)
v.) Docket No. 3506-68
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

PETITIONER'S REPLY TO THE NOTICE OF OBJECTION.

PETITIONER replying to the Notice of Objection to his motion for a Bill of Particulars, respectfully shows to this Court:

1. The Commisioner's argument that since the motion for a further and better statement was previously denied, this motion for a Bill 6f Particulars must likewise be denied, is error.

2. There is a difference between a motion for a more definite statement and a motion for a bill of particulars. If a pleading is so vague that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement. If the pleading fairly notifies the opposing party of the nature of the claim, a motion for more definite statement will not be grantdd. (Schaedler v. Reading Eagle Publication - 370 F. 2nd 795(3rd Cir.); Mitchell v. E.Z way Tours - 269 F. 2nd 126(5th Cir.), B-H Trans. v. Great A & P. 44 F.R.D 436 (S.D. N.Y.), Oresman v. G.D. Searle & Co. 321 F. Supp 449,458 (Dt. Ct. Rhode Island).

The purpose of a bill of particulars is to enable a litigant to obtain details the claim that will prevent him against surprise and give notice of the real issues tendered. (Walling v. West Virginia Pulp & Paper Co. 2 FRD 416; Young v.Mason-Walsh-Atkinson Kier Co. 33 F. Supp. 358; Nordman v. City of Johnson City - 1 FR Serc. 12e).

Thus, the distinction between a motion for a more definite statement and a motion for a bill of particulars is clear. In a motion for a bill the party seeking such bill is merely seeking details of the claim so that the issues can be properly met at the trial.

3. This is particularly true in the Tax Court since no discovery or pre-trial procedure is provided under which the taxpayer might gain the information sought.

WHEREFORE, it is prayed that petitioner's motion be granted.

FRANK L. SILVERMAN,
Attorney for Petitioner-Pro Se
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UNITED STATES TAX COURT
WASHINGTON

FRANK L. SILVERMAN
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3506-68

ORDER

This case was called from the calendar for the Motions Session on June 13, 1973, at Washington, D.C., for hearing on petitioner's motion for Bill of Particulars filed April 30, 1973. The motion was argued by petitioner and counsel for respondent. After due consideration and for cause appearing in the transcript of the proceedings this date, it is

ORDERED that petitioner's motion for Bill of Particulars is denied.

(signed) Theodore Tannenwald Jr.
Judge

Dated: Washington, D.C.
June 13, 1973

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 9003-1972.

219-27

MOTION FOR BILL OF PARTICULARS

THE PETITIONER MOVES pursuant to the provisions of Rule 17(c) and Rule 18 of the Tax Court Rules of Practice, that the Court enter an order directing the Respondent to serve and file a Bill of Particulars as to the following items, upon which the Burden of Proof is upon the Petitioner:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1961, in the sum of $21,972.11, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1961.

(c). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1961, to have resulted in capital gains of $12,717.26.

(d). The name or names of the securities and the date or dates these securities were purchased and

and sold.

(e). State in detail, how the Respondent arrives at the sum of $12,717.26, as capital gains for the taxable year ending December 31, 1961.

(f). A complete list of the unexplained deposits for the taxable year ending December 31, 1962, in the sum of $22,449.59, particularly the name or names of the bank or banks or any other depository, and the account numbers if any, in which the alleged unexplained deposits were made.

(g). The date or dates of each unexplaind deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1962.

(H). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1962, to have resulted in capital gains of $2,404.89.

(i). The name or names of the securities and the date or dates these securities were purchased and sold.

(j). State in detail, how the Respondent arrives at the sum of $2,404.89 as capital gains for the taxable year ending December 31, 1962.

(k). State in detail, the name or names of the securities which allegedly paid dividends to petitioner in the calendar year ending December 31, 1961, in the sum of $4,952.73.

(l). State in detail how respondent arrives at the sum of $4,952.73 as additional dividend income for the calendar year ending December 31, 1961, as alleged by the Respondent.

(m). State in detail the name or names of the securities which allegedly paid dividends to petitioner in the calendar year ending December 31, 1962, in the sum of $3,806.93.

(n). State in detail how respondent arrives at the sum of $3,806.93 as additional dividend income for the calendar year ending December 31, 1962, as alleged by the Respondent.

And in the event the Respondent fails to serve and file such Bill of Particulars within the time permitted by this Court, that the Respondent be precluded from offering any evidence as to those items on the trial of this proceeding.

IN SUPPORT THEREOF, the Petitioner respectfully shows unto the Court.

1. In the statutory notice of deficiency dated September 15, 1972, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income taxes for the taxable years ending December 31, 1961, and December 31, 1962, in the amount set forth in the notice of deficiency, a copy of which is attached to the Petition as Exhibit "A". In the statement attached to the notice of deficiency, the Respondent stated, "that the Petitioner realized unreported income in the amount of $21,972.11, for the taxable year ending December 31, 1961, and the sum of $22,449.59 for the taxable year ending December 31, 1962, represented by unexplained bank deposits.

2. The notice of deficiency further states that the Respondent determined that petitioner realized capital gains income in the sum of $22,717.16 for the taxable year ending December 31, 1961, and the sum of $2,404.89 for the

taxable year ending December 31, 1962.

3. The notice of deficiency further states that Respondent determined that petitioner realized additional dividend income of $4,952.73 for the taxable year ending December 31, 1961, and additional dividend income of $3,806.93, for the taxable year ending December 31, 1962.

4. In his explanation of adjustments, attached to the notice of deficiency, the Respondent states: (a) In the absence of adequate records your taxable income for the years 1961 and 1962 is computed by reference to bank deposits and cash payments plus personal and other nondeductible expenditures. That your income is increased from unexplained deposits and other unreported income as follows:

Unreported income	1961	1962
Unexplained Deposits	$21,972.11	$22,449.59
Capital Gains Income	12,717.26	2,404.89
Dividend Income	4,952.73	3,806.93

5. As can be seen from the foregoing , Respondent maintains that petitioner made "unexplained" deposits in the sum of $21,972.11 for the taxable year ending December 31, 1961, and "unexplained" deposits of $22,449.59, for the taxable year ending December 31, 1962. In addition thereto, the Respondent maintains that Petitioner did not report Capital Gains income for the sum of $$12,717.26 for the taxable year ending December 31, 1961, and the sum of $2,404.89 for the taxable year ending December 31, 1962. The Respondent further maintains that petitioner did not report dividend income of $4,952.73 for the taxable year ending December 31, 1961, and $3,806.93 for the taxable year ending

December 31, 1962.

6. In his answer, paragraph 5(e), the Respondent admits that the respondent determined that petitioner realized unreported taxable income in the amount of $21,972.11 for the taxable year ending December 31, 1961, and the sum of $22,449.59 for the taxable year ending December 31, 1962, represented by unexplained deposits

7. The allegations set forth in Paragraph 5(e) of the answer does not break down the deposits claimed to be "unexplained". It is respectfully submitted that since the Petitioner has the burden of proof, and of an explanation of the depodits claimed to be "unidentified", Petitioner should be advised by the Respondentas to the deposits claimed to be "unexplained."

8. In his answer, Paragraph 5(g), the Respondent admits that the respondent determined that petitioner realized capital gains income in the sum of $12,717.16 for the taxable year ending December 31,1961, and the sum of $2,404.89 for the taxable year ending December 31,1962.

9. The allegations set forth in Paragraph 5(g) of the answer does not state the securities bought and sold, nor how the Respondent arrives at the sum it seeks to charge Petitioner as Capital gains for the taxable years in question. Since, the burden of proof is on the petitioner, it is respectfully submitted that the Petitioner in order to meet this burden should have all the information necessary to meet the issue of unreported capital gains for the taxable years ending December 31,1961,and December

31, 1962.

10. In his answer, Paragraph 5(c), the Respondent admits that the respondent determined that petitioner realized additional dividend income in the amount of $4,952.73, for the taxable year 1961, and additional taxable dividend income in the amount of $3,806.93 for the taxable year 1962, which were not reported for Federal Income Tax purposes.

11. The allegations set forth in Paragraph 5(c) of the answer in no wise advise the Petitioner, any details of the alleged dividend income. Since the burden of proof is on the petitioner, it is respectfully submitted that the Petitioner should be given the name or names of the companies or corporations that paid said dividends, and how the respondent arrives at the sum set forth in his answer as unreported dividend income.

12. The Respondent should be required by this Court to serve and file a Bill of Particulaurs, as to the "unexplained" deposits, the alleged capital gains, and the unreported dividend income. Said Bill of Particulrs should include specific allegations of fact with respect to the following items:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1961, in the sum of $21,972.11, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits/are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1961.

(c). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1961, to have resulted in capital gains of $12,717.26.

(d). The name or names of the securities and the date or dates these securities were purchased and sold.

(e). State in detail, how the Respondent arrives at the sum of $12,717.26, as capital gains for the taxable year ending December 31, 1961.

(f). A complete list of the unexplained deposits for the taxable year ending December 31, 1962, in the sum of $22,449.59, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(g). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1962.

(h). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1962, to have resulted in capital gains of $2,404.89.

(i). The name or names of the securities and the date or dates these securites were purchased and sold.

(j). State in detail, how the Respondent arrives at the sum of $2,404.89, as capital gains for the taxable year ending December 31, 1962.

(k). State in detail, the name or names of the securities which allegedly paid dividends to petitioner in the calendar year ending December 31, 1961, in the sum of $4,952.73.

(l). State in detail how respondent arrives at the sum of $4,952.73 as additional dividend income for the calendar year ending December 31, 1961, as alleged by the Respondent.

(m). State in detail the name or names of the securities which allegedly paid dividends to preti tioner in the calendar year ending December 31, 1962, in the sum of $3,806.93.

(n). State in detail how respondent arrives at the sum of $3,806.93, as additional dividend income for the calendar year ending December 31, 1962, as alleged by the Respondent.

13. It is respectfully submitted that the mere making of a bank deposit does not prove the receipt of taxable income. (Coe v. Commissioner - 198 F. 2nd 851. (C.A. 3rd)., cert. denied - 344 U.S. 897), and in order for the Petitioner to make a reasonable explanation as to the source and nature of the "unexplained deposits", it is essential that petitioner be advised which alleged "unexplained deposits" are claimed by the Respondent to be taxable income. (See - O'Dyer v. C.I. R. 266 F. 2nd 575 - C.A. 4th; Estate of Gladys Horwitz - TC Memo 1965, 269; Hoelfe v. Commissioner- 114 F. 2nd 713 C.A. 6th).

14. It is also respectfully submitted that Petitioner is entitled to know the source and nature of the alleged capital gains and additional dividend income for the taxable years in question, in order to properly meet these issues at the trial of this proceeding.

It should be noted that the taxable years 1961 and 1962, were some elven and twelve years ago.

WHEREFORE, it is prayed:

(1). That the Court enter an order directing the Respondent to serve and file a Bill of Particulars, as to the items requested in the Notice of Motion.

(2). That in the event the Respondent fails to serve and file such Bill of Particulars within the time permitted by this Court, that the Respondent be precluded from offering any evidence as to those items on the trial of the above entitled case.

Frank L. Silverman
FRANK L. SILVERMAN

FRANK L. SILVERMAN,
Attorney for Petitioner - Pro Se
Office & P. O. Address
238 Broadway,
New York, N.Y. 10007

Sworn and Subscribed this
30th, day of July, 1973.

ARTHUR KLEIN
Notary Public, State of New Yo
No. 41-2138805
Qualified in Queens County
My commission expires Mar. 30,

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TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN and ANNA SILVERMAN,)
Petitioners,)
v.) Docket No. 9004-72.
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

MOTION FOR BILL OF PARTICULARS

The PETITIONERS MOVE pursuant to the provisions of Rule 17(c) and Rule 18 of the Tax Court Rules of Practice, that the Court enter an order directing the Respondent to serve and file a Bill of Particulars as to the following items, upon which the Burden of Proof is upon the Petitioners:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1963, in the sum of $11,584.09, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1963.

(c). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1963, to have resulted in capital gains of $40.14.

(d). The name or names of the securities and the date or dates these securities were purchased and sold.

(e). State in detail, how the Respondent arrives at the sum of $40.14 as capital gains for the taxable year ending December 31, 1963.

(f). A complete list of the unexplained deposits for the taxable year ending December 31, 1964, in the sum of $22,653.24, particularly the name or names of the bank or banks or any other depository, and the account numbers if any, in which the alleged unexplained deposits were made.

(g). The date or dates of each unexplained deposit and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1964.

(h). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1964, to have resulted in capital gains of $1,160.36.

(i). The name or names of the securities and the date or dates these securities were purchased and sold.

(j). State in detail, how the Respondent arrives at the sum of $1,160.36 as capital gains for the taxable year ending December 31, 1964.

(k). A complete list of the unexplained deposits for the taxable year ending December 31, 1965, in the sum of $25,601.86, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(l). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending

December 31, 1965.

(m). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1965, to have resulted in capital gains of $18,716.81.

(n). The name or names of the securities ~~sold~~ and the date or dates these securities were purchased and sold.

(o). State in detail, how the Respondent arrives at the sum of $18,716.81 as capital gains for the taxable year ending December 31, 1965.

(p). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1963, in the sum of $3,570.77.

(q). State in detail how Respondent arrives at the sum of $3,570.77 as additional dividend income for the calendar year ending December 31, 1963, as alleged by the Respondent.

(r). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1964, in the sum of $3,618.33.

(s). State in detail how Respondent arrives at the sum of $3,618.33 as additional dividend income for the calendar year ending December 31, 1964, as alleged by the Respondent.

(t). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1965, in the sum of

$5,709.70.

(u). State in detail how Respondent arrives at the sum of $5,709.70 as additional dividend income for the calendar year ending December 31, 1965, as alledged by the Respondent.

And in the event the Respondent fails to serve and file such Bill of Particulars within the time permitted by this Court, that the Respondent be precluded from offering any evidence as to those items on the trial of this proceeding.

IN SUPPORT THEREOF, the Petitioners respectfully show unto the Court.

1. In the statutory notice of deficiency dated September 15, 1972, upon which notice the above entitled case is based, the Respondent determined that there were deficiencies in income taxes for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965, in the amount set forth in the notice of deficiency, a copy of which is attached to the Petition as Exhibit "A". In the statement attached to the notice of deficiency, the Respondent stated "that the petitioners realized unreported income in the amount of $11,584.09 for the taxable year ending December 31, 1963, the sum of $22,653.24 for the taxable year ending December 31, 1964, and the sum of $25,601.86 for the taxable year ending December 31, 1965, represented by "unexplained deposits".

2. The notice of deficiency further states, that the Respondent determined that petitioner realized capital gains income in the sum of $40.14 for the taxable year ending December 1, 1963, the sum of $1,160.36 for the

taxable year ending December 31, 1964, and the sum of $18,716.81 for the taxable year ending December 31, 1965.

3. The notice of deficiency further states that Respondent determined that petitioners realized additional dividend income of $3,570.77 for the taxable year ending December 31, 1963, additional dividend income of $3,618.33 for the taxable year ending December 31, 1964, and additional dividend income of $5,709.70 for the taxable year ending December 31, 1965.

4. In his explanation of adjustments, attached to the notice of deficiency, the Respondent states: (a). In the absence of adequate records your taxable income for the years 1963, 1964 and 1965 is computed by reference to bank deposits and cash payments plus personal and other nondeductible expenditures. That your income is increased from unexplained deposits and other unreported income as follows:

Unreported Income	1963	1964	1965
Unexplained Deposits	$11,584.09	$22,653.24	$25,601.86
Capital Gains Income	40.14	1,160.36	18,716.81
Dividend Income.	3,570.77	3,618.33	5,709.70

5. As can be seen from the foregoing, Respondent maintains that petitioners made "unexplained" deposits in the in the sum of $11,584.09 for the taxable year ending December 31, 1963, "unexplained" deposits in the sum of $22,653.24 for the taxable year ending December 31, 1964, and "unexplained" deposits in the sum of $25,601.86 for the taxable year ending December 31, 1965. In addition thereto, the Respondent maintains that petitioners did not report Capital Gains income for the sum of $40.14 for the taxable year ending

December 31, 1963, the sum of $1,160.36 for the taxable year ending December 31, 1964, and the sum of $18,716.81 for the taxable year ending December 31, 1965.

6. In his answer, Paragraph 5(e), the Respondent admits that the respondent determined that petitioners realized unreported taxable income in the amount of $11,584.09 for the taxable year ending December 31, 1963, the sum of $22,972.11 for the taxable year ending December 31, 1964, and the sum of $25,601.86 for the taxable year ending December 31, 1965, represented by unexplained deposits.

7. The allegations set forth in Paragraph 5(e) of the answer does not break down the deposits claimed to be "unexplained". It is respectfully submitted that since the Petitioners have the burden of proof, and the burden of explaining the alleged "unexplained " deposits, the Petitioners should be advised the nature and extend of all "unexplained" deposits.

8. In his answer, Paragraph 5(g), the Respondent admits that the Respondent determined that Petitioners realized capital gains income in the sum of $40.14 for the taxable year ending December 31, 1963, the sum of $1,160.36 for the taxable year ending December 31, 1964, and the sum of $18,716.01 for the taxable year ending December 31, 1965.

9. The allegations set forth in Paragraph 5(g) of the answer does not state the securities bought and sold, nor how the Respondent arrives at the sums it seeks to charge Petitioners as capital gains for the taxable years in question. Since, the burden of proof is on the petitioners, it is respectfully submitted that the Petitioners

in order to meet their burden have all the information necessary to meet the issue of unreported capital gains, for the taxable years ending December 31, 1963, December 31, 1964 and December 31, 1965.

10. In his answer, Paragraph 5(c), the Respondent admits that the Respondent determined that petitioners realized additional dividend income in the amount of $3,570.77 for the taxable year ending December 31, 1963; $3,618.33 for the taxable year ending December 31, 1964 and additional dividend income in the amount of $5,709.70 for the taxable year ending December 31, 1965, which was not reported for Federal Income Tax purposes.

11. The allegations set forth in Paragraph 5(c) of the answer in no wise advise the Petitioners of any of the details of the alleged dividend income. Since, the burden of proof is on the Petitioners, it is respectfully submitted that the Petitioners should be given the name or names of the companies or coprorations that paid said dividends, and how the respondent arrives at the sum set forth in his answer as unreported dividend income.

12. The Respondent should be required by this Court to serve and file a Bill of Particulars, as to the "unexplained" deposits, the alleged capital gains and the unreported dividend income. Said Bill of Particulars should indicate specific allegations of fact with respect to the following items:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1963, in the sum of $11,584.09, particularly the name or names of the banks or bank or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1963.

(c). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1963, to have resulted in capital gains of $40.14.

(d). The name or names of the securities and the date or dates these securities were purchased and sold.

(e). State in detail, how the Respondent arrives at the sum of $40.14 as capital gains for the taxable year ending December 31, 1963.

(f). A complete list of the unexplained deposits for the taxable year ending December 31, 1964, in the sum of $22,653.24, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(g). The date or dates of each unexplained deposit and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1964.

(h). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1964, to have resulted in capital gains of $1,160.36.

(i). The name or names of the securities and

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the date or dates these securities were purchased and sold.

(j). State in detail, how the Respondent arrives at the sum of $1,160.36 as capital gains for the taxable year ending December 31, 1964.

(k). A complete list of the unexplained deposits for the taxable year ending December 31, 1965, in the sum of $25,601.86, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(l). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1965.

(m). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1965, to have resulted in capital gains of $18,716.81.

(n). The name or names of the securities and the date or dates these securities were purchased and sold.

(o). State in detail, how the Respondent arrives at the sum of $18,716.81 as capital gains for the taxable year ending December 31, 1965.

(p). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1963, in the sum of $3,570.77.

(q). State in detail how Respondent arrives at the sum of $3,570.77 as additional dividend income for the calendar year ending December 31, 1963, as alleged by the Respondent.

(r). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1964, in the sum of $3,618.33.

(s). State in detail how Respondent arrives at the sum of $3,618.33 as additional dividend income for the calendar year ending December 31, 1964, as alleged by the Respondent.

(t). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1965, in the sum of $5,709.70.

(u). State in detail how Respondent arrives at the sum of $5,709.70 as additional dividend income for the calendar year ending December 31, 1965, as alleged by the Respondent.

13. It is respectfully submitted that the mere making of a bank deposit does not prove the receipt of taxable income. (Coe v. Commissioner - 198 F. 2nd 851. (C. A. 3rd)., cert. denied - 344 U. S. 897), and in order for the Petitioners to make a reasonable explanation as to the source and nature of the "unexplained deposits", it is essential that Petitioners be advised which alleged "unexplained deposits" are claimed by the Respondent to be taxable income. (See - O'dyer v. C.I.R. - 266 F. 2nd 575 - C. A. 4th; Estate of Gladys Horwitz - TC Memo 1965, 269; Hoelfe v. Commissioner - 114 F. 2nd 713, C. A. 6th).

14. It is also respectfully submitted that Petitioners are entitled to know the source and nature of the alleged capital gains and additional dividend income for the taxable years in question, in order to properly meet these issues at the trial of this proceeding.

It should be noted that the taxable years 1963, 1964 and 1965 were some eight, nine and ten years ago.

WHEREFORE, it is prayed:

(1). That the Court enter an order directing the Respondent to serve and file a Bill of Particulars, as to the items requested in the Notice of Motion.

(2). That in the event the Respondent fails to serve and file such Bill of Particulars within the time permitted by this Court, that the Respondent be precluded from offering any evidence as to those items on the trial of the above entitled case.

Frank L. Silverman
FRANK L. SILVERMAN.

Anna Silverman
ANNA SILVERMAN.

FRANK L. SILVERMAN,
Attorney for Petitioners - Pro Se,
Office & P. O. Address,
258 Broadway,
New York, N.Y. 10007

Sworn and Subscribed this
30th, day of July, 1973.

ARTHUR KLEIN
Notary Public, State of New York
No. 41-2138805
Qualified in Queens County
My commission expires Mar.30,1975

TAX COURT OF THE UNITED STATES

FRANK L.SILVERMAN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.
9003-1972

FRANK L.SILVERMAN and ANNA SILVERMAN

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.
9004--1972

STATEMENT

This memorandum of law is submitted on behalf of the petitioners in support petitioners motion for bills of particulars in the above entitiled matters, calendared for hearing by this Court on September 12,1973, in Court room Number 2, 1111 Constitution Avenue, N.W. Washington, D.C. Since the relief requested in both of the motions are similiar, the petitioners submit this memorandum of law,covering both actions.

FACTS

In Docket No.9003-1972, the taxable years in question are the taxable years 1961 and 1962. In Docket No.9004-72, the taxable years in question are the taxable years 1963,1964 and 1965.

In the statutory notice of deficiency dated September 15, 1972, the Respondent determined that there were deficiencies in income taxes for the taxable years ending December 31,1961,December 31,1962, December 31,1963,December 31,1964 and December 31,1965.

In the statement attached to the notice of deficiency the Respondent stated, that Petitioners realized unreported income in the amount of $21.972.11 for the taxable year ending December 31,1961, the sum of $22,449.59 for the year ending December 31,1962, the sum of $11,584.09 for the taxable year ending December 31,1963, the sum of $22,653.24 for the taxable year ending December 31,1964 and the sum of $25,601.86 for the taxable year ending December 31, 1965.

The notice of deficiency further state that the Respondent determined that petitioners realized capital gains income in the sum of $22,717.16 for the taxable year ending December 31,1961, the sum of $2,404.89 for the taxable year ending December 31,1962,$40.14 for the taxable year ending December 31,1963,the sum of $1,160.36 for the taxable year ending December 31,1964 and the sum of $18,716.81 for the taxable year ending December 31,1965.

The notice of deficiency further state that the Respondent determined that petitioners realized additional dividend income of $4,952.73 for the taxable year ending December 31,1961, $3,806.93 for the taxable year ending December 31,1962,$3,570.77 for the taxable year ending December 31,1963,$3,618.33 for the taxable year ending December 31,1964,and additional income of $5,709.70 for the taxable year ending December 31,1965.

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It is respectfully submitted that the Respondent should serve and file a Bill of Particulars as to the following items, upon which the Burden of Proof is upon the Petitioners:

(a). A complete list of the unexplained deposits for the taxable year ending December 31, 1961, in the sum of $21,972.11, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1961.

(c). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1961, to have resulted in capital gains of $12,717.26.

(d). The name or names of the securities and the date or dates these securities were purchased and sold.

(e). State indetail, how the Respondent arrives at the sum of $12,717.26 as capital gains for the taxable year ending December 31, 1961.

(f). A complete list of the unexplained deposits for the taxable year ending December 31, 1962, in the sum of $22,449.59, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(g). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by Respondent to be income and subject to tax, for the taxable year ending December 31, 1962.

(h). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1962, to have resulted in capital gains of $2,404.89.

(i). The name or names of the secuirites and the date or dates these securities were purchased and sold.

(j). State in detail, how the Respondent arrives at the sum of $2,404.89 as capital gains for the taxable year ending December 31, 1962.

(k). State in detail, the name or names of the securities which allegedly paid dividends to petitioner in the calendar year ending December 31, 1961, in the sum of $4,952.73.

(l). State in detail how Respondent arrives at the sum of $4,952.73 as additional dividend income for the calendar year ending December 31, 1962, as alleged by the Respondent.

(m). State in detail the name or names of the securities which allegedly paid dividends to petitioner in the calendar year ending December 31, 1962, in the sum of $3,806.93.

(n). State in detail how respondent arrives at the sum of $3,806.93 as additional dividend income for the calendar year ending December 31, 1962, as alleged by the Respondent.

(aa). A complete list of the unexplained deposits for the taxable year ending December 31, 1963, in the sum of $11,584.09, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(bb). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1963.

(cc). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1963, to have resulted in capital gains of $40.14.

(dd). The name or names of the securities and the date or dates these securities were purchased and sold.

(ee). State in detail, how the Respondent arrives at the sum of $40.14 as capital gains for the taxable year ending December 31, 1963.

(ff). A complete list of the unexplained deposits for the taxable year ending December 31, 1964, in the sum of $22,653.24, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained deposits were made.

(gg). The date or dates of each unexplained deposit and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1964.

(hh). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1964, to have resulted in capital gains of $1,160.36.

(ii). The name or names of the securities and the date or dates these securities were purchased and sold.

(jj). State in detail, how the Respondent arrives at the sum of $1,160.36 as capital gains for the taxable year ending December 31, 1964.

(k)K). A complete list of the unexplained deposits for the taxable year ending December 31, 1965, in the sum of $25,601.86, particularly the name or names of the bank or banks or any other depository, and the account numbers, if any, in which the alleged unexplained depositis were made.

(ll). The date or dates of such unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1965.

(mm). A complete list of the gains and losses of securities alleged by the Respondent for the taxable year ending December 31, 1965, to have resulted in capital gains of $18,716.81.

(nn). The name or names of the securities and the date or dates these securities were purchased and sold.

(00) State id detail, how the Respondent arrives at the sum of $18,716.81 as capital gains for the taxable year ending December 31, 1965.

(pp), State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1963, in the sum of $3,570.77.

(qq). State in detail how respondent arrives at the sum of $3,570.77 as additional dividend income for the calendar year ending December 31, 1963, as alleged by the Respondent.

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(rr). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1964, as alleged by the Respondent.

(ss). State in detail how Respondent arrives at the sum of $3,618.33 as additional dividend income for the calendar year ending December 31, 1964, as alleged by the Respondent.

(tt). State in detail, the name or names of the securities which allegedly paid dividends to petitioners in the calendar year ending December 31, 1965, in the sum of $5.709.70.

(uu). State in detail, how Respondent arrives at the sum of $5,709.70 as additional dividend income for the calendar year ending December 31, 1965, as alleged by the Respondent.

It is respectfully submitted that for the petitioners to meet the burden of overcoming the presumption of the correctness of Respondent's determination, it is necessary and essential that the Commissioner of Internal Revenue, advise this Court and the petitioners of each and every deposit which the Respondent claims are unexplained deposits and thus taxable income. It is also necessary and essential that the Respondent advise petitioners of how he arrives at capital gains income for the taxable years in question and also a list of dividend income allegedly received by the petitioners.

ARGUMENT

In Merten's Law of Federal Income Taxation - (Vol. 9 - Zimet Revision - Section 50.48 - Page 132, it is stated that one of the typical motions that may be made in the Tax Court is a motion for a bill of particulars, citing

citing Tax Court Rules,No.and 17(c) 1.

In George N.Still v Commissioner-10 T C M 537, CCH Dec.18,560-Docket No.25744(1951), this Court on its own motion stated:

> " The pleadings require clarification. Therefore under Rule 18 of the Court Rules, the Court on its own motion orders the Respondent to clarify its pleading so as to allege clearly (1) whether or not its income should include for the fiscal year ended July 31,1945,proceeds from sales in the amount of $30,015.64, and (2) whether or not the petitioner is entitled to deduction for the same amount and for what reason."

One of the purposes of the Rules of this Court is to bring about an orderly,fair and time-conserving disposition of issues. Furthermore, the taxpayer is entitled to know the facts upon which the Commissioner relies to prove that the "unidentified deposits are income, and therefore taxable. The taxpayer is alos entitled to know how the Commissioner arrives at the capital gains and dividend income for the taxable years in question.

In Grace Licavoli v Commissioner-15 T.C.M.862-Docket No. 58055-58057(1956), this Court said at page 864:

> " Furthermore, the taxpayer is entitled to know what the facts are upon which the Commissioner relies to prove fraud so that he can prepare his defense,and it is essentail that the facts be pleaded in sufficient detail that each allegation may be admitted or denied and the area of disagreement as to the facts reduced in that fashion to a minimum,thus conserving the time, effort and expense of all concerned including the Court. This is particularly true in the Tax Court, pleadings,since no discovery or pre-trial procedure is expressly provided under ~~the~~ which the taxpayer might gain the same information which is sought here."

The purpose of a bill of particulars is to enable a litigant to obtain from his adversary pertinent details of such adversary's claim that will prevent him against surprises and give notice of the real issue tendered(Walling v West Virginia Pulp & Paper Co. 2 F R D 416; Young v Mason-Walsh-Atkin-HierCo. - 33 F.Supp.358;Nordman v City of Johnson City-1 FR Serc.12c).

At bar, the Commissioner zlleges that the petitioners made unexplained deposits in the taxabl e years 1961,1962,1963,1964 and 1965 in various banks or other depositories, and the Commissioner also alleges that the petitioners failed to report taxable income in capital gains and dividend income for these taxable years.

It is elementary that the mere making of a bank deposit does not prove the receipt of taxable income.(Merten-Law of Federal Income Taxation-Vol.2-Section 12.12 Page 72)or as said in Coe v. Commissioner-193 F.2nd 851(C.A.3rd)Cert.denied,344 U.S.897,at page 851)

> " He(the taxpayer) reasons first and correctly that proof of bank deposits standing alone does not establish the receipt of income."

In O'Dwyer v C.I.R. 266 F.nd 575, at page 588(C.A.4th, the rule as to bank deposits is stated as follows:

> " Taxpayers argue that an isolated bank deposit, standing alone is not enough to show the receipt of income, and charge that the determination of the Commissioner that the $1500.00 deposit represented taxable income was arbitrary and capricious.
> * * * The Tax Court had no information or evidence before it as to the source or nature of either deposit, but is was confronted with the presumption of correctness attaching to the Commissioner's determination that the particular deposit represented taxable income. The Tax Court stated: The Petitioners have not sustained their burden of overcoming this presumption. They introduced no evidence or testimony They seemed content to rely on the fact that the $1500.00 was deposited in a joint bank account.
> * * In the absence of some evidence that the $1500.00 did not represent taxable income, we must sustain therespondent's determination in this regard.

> All taxpayer had to do in irder to overcome the presumption of correctness was to make some reasonable explaination as to the source and nature of the deposit in question. The presumption existed, the Commissioner's determination was prima facia correct and the burden was upon the taxpayer in the Tax Court to overcome this presumption. (See Hoelfe v Commissioner 114 F.2nd 713(C.A.6th).

In order to meet the test laid down in O'Dwyer, supra, and make a reasonable explanation as to the source and nature of the unexplained deposits, it is necessary and essential that petitioners as taxpayers be advised which "unexplained deposits" are alleged to be taxable income.

It should be noted, that the transactions in question occurred in 1961,1962,1963,1964 and 1965,between nine and twelve years ago.

In the Estate of Gladys Horwitz-T C Memo-1965,260, this Court held that the petitioner had met its burden of proving that the bank deposits were not taxable income.

At bar, it is apparent that the Respondent in making his determination of "unexplained deposits" took deposits made by the petitioners in the taxable years 1961,1962,1963,1964 and 1965, and labeled all deposits "unexplained deposits" and ipso facto, taxable income,

The Respondent should break down each and every deposit, and where made, in order that petitioners may check the nature and source of each deposit in question. The same is true as to capital gains and dividend income.

Since, the burden of proof to show that the Commissioner's determination was erroneous is on the petitioners it is respectfully submitted that unless petitioners are advised of the exact nature of each deposit, claimed to be taxable income, and of how the Commissioner arrives at capital gains and dividend income, it will be impossible for the petitioners to meet their burden.

CONCLUSION

THIS COURT SHOULD ENTER AN ORDER REQUIRING THE RESPONDENT TO SERVE AND FILE A BILL OF PARTICULARS AS TO THE ITEMS REQUESTED, AND FOR SUCH OTHER AND FURTHER RELIEF AS TO THIS COURT MAY SEEM NECESSARY IN THE PREMISES.

RESPECTFULLY SUBMITTED,

FRANK L. SILVERMAN,
Attorney for Petitioners- Pro Se
Office & P.O. Address
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New York, N.Y. 10007

UNITED STATES TAX COURT
WASHINGTON

FRANK L. SILVERMAN, ET AL)
Petitioners,)
)
v.) Docket Nos. 9003-72
) 9004-72
COMMISSIONER OF INTERNAL REVENUE,)
Respondent.)

ORDER

These cases came on at the Motions Session at Washington, D. C., on September 12, 1973, for hearing, in each case, on petitioners' motion for a bill of particulars filed on July 31, 1973, and on respondent's motion for leave to file amendment to answer out of time, filed on August 28, 1973. Petitioner Frank Silverman and counsel for respondent appeared and argued their motions, and Mr. Silverman also filed at the hearing a written statement in support of petitioners' motions. Respondent's motions for leave were granted, and petitioners' motions were taken under advisement to permit the Court to give consideration to Mr. Silverman's written statement.

When petitioners' motions for a bill of particulars were filed, the Court issued its usual notices calendaring such motions for hearing on September 12, and also stating that if the respondent filed proper amended pleadings in accordance with Rule 27(a)(3) of the Court's Rules of Practice, the motion would be denied without hearing and without prejudice to the right of petitioners to move, or otherwise to respond with respect to the amended pleadings.

On August 28, the respondent filed his above-mentioned motions for leave to file amendments to his answer, which were due on August 27, out of time; and he alleged therein that the amendments had been timely received in the National Office of the Internal Revenue Service, but "through inadvertence" were not filed on the due date of August 27. The amendments to the answers, attached to the motion for leave, were lodged.

At the hearing on September 12, it appearing to the Court that petitioners had not been prejudiced by the one-day delay and without objection on the part of Mr. Silverman, the Court, as stated, granted the respondent's motions for leave, and directed that the accompanying amendments to answers be filed.

These cases embrace the years 1961 and 1962 (Docket No. 9003-72), and 1963 through 1965 (Docket No. 9004-72). In each case, the respondent made three adjustments (among others) for each of the years involved, which were the subject of petitioners' motions for bill of particulars: Increase in income from (1) unexplained bank deposits, (2) dividends, and (3) capital gains. An examination of respondent's amendment to answer in each case, clearly establishes that the information sought in the bill of particulars has been furnished, with respect to the dividends and the capital gains. That leaves for consideration the information sought in the motions for bill of particulars and that furnished in the amendments to answers, with respect to the unexplained bank deposits.

Paragraphs (a) and (b) of petitioner's motion in Docket No. 9003-72, dealing with 1961, are typical of petitioners' requests for information regarding unexplained deposits. These paragraphs are, as follows:

> (a). A complete list of the unexplained deposits for the taxable year ending December 31, 1961, in the sum of $21,972.11, particularly the name or names of the bank or banks or any other depository, and the account number, if any, in which the alleged unexplained deposits were made.
>
> (b). The date or dates of each unexplained deposit, and the amount of such deposits as are claimed by the Respondent to be income and subject to tax, for the taxable year ending December 31, 1961.

Turning to respondent's amendment to answer in Docket No. 9003-72, the following information supplied with respect to accounts in the Merchants Bank of New York is typical of that supplied for other banks and brokerage houses.

Analysis of Deposits
Merchants Bank of New York

Source	Regular-Spec.	Regular	Total
1961			
Total Deposits	$23,847.32	$6,271.03	$30,118.35
Eliminations			
Professional Receipts	$8,153.99	$1,125.00	$9,278.99
Dividends	1,950.34	1,548.75	3,499.09
Stock Brokers	5,488.20		5,488.20
Total	$15,592.53	$2,673.75	$18,266.28
Unidentified Deposits	$ 8,254.79	$3,597.28	$11,852.07

In our opinion, the foregoing typical information, furnished by respondent in his amendment to answer, is adequate for the pleadings in these cases. The details of the dates and composition of the myriad of deposits going to make up the total of deposits, and the dates for the deposits embraced in the eliminations, are matters of evidence and have no place in the pleadings. The burden is on the petitioners to establish from their records any further eliminations from the deposits which they believe are non-income items. In the process of stipulating facts in these cases, as the parties are required to do by Rule 31 of the Court's Rules of Practice, the Court will expect counsel for the respondent to show to petitioners any details concerning the deposits if the petitioners, who should have among their own records such information, do not now have the same.

Premises considered, it is accordingly

ORDERED that petitioner's motion for bill of particulars, in each of these cases, be and the same is hereby denied.

(signed) RANDOLPH F. CALDWELL, Jr.
Commissioner

Dated: Washington, D. C.
September 17, 1973

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UNITED STATES
TAX COURT
FILED
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TAX COURT OF THE UNITED STATES

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FRANK L.SILVERMAN,

Petitioner,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 3506-1968
Docket No. 9003-1972

U. S. TAX COURT
DENIED
NEW YORK
JAN 30 [illegible]
C Moxley Featherston
JUDGE

FRANK L.SILVERMAN and ANNA SILVERMAN,

Petitioners,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 9004-1972

252-68

MOTION ON BEHALF OF PETITIONERS FOR AN ORDER DIRECTING RESPONDENT TO FURNISH AN ITEMIZED STATEMENT OF THE UNEXPLAINED TAXABLE DEPOSITS TO THE PETITIONERS FOR THE YEARS, 1960 to 1965 INCLUSIVE.

(a) The Petitioners moves this Court, for an order directing the Respondent to furnish Petitioners with an itemized statement of each and every unexplained deposit, as listed by him in his notice of deficiency, for the taxable year ending December 31,1960, for the year ending December 31,1961, for the year ending December 31,1962, for the year ending December 31,1963, for the year ending December 31, 1964 and for the year ending December 31, 1965, that the said Respondent claims to be taxable.

(b) September 16, 1974, the undersigned duly served upon the Respondent, pursuant to Rule 71 of the United States Tax Court, requesting the information as to itemization of each and every unexplained deposit that the said Respondent claims to be taxable, for the periods in question or involved herein. A copy of said notice annexed hereto Exhibit "A" and same made a part hereof.

(c) At the end of October, 1974, the Respondent served upon the undersigned a list of numbers without identifying the unexplained deposits that he claims to be taxable. That those numbers so served upon the undersigned are in compliance with the demand served on the Respondent and are totally inadequate to the Petitioners herein.

(d) That the Respondent was so advised of the inadequacy of information furnished by him, by letter,dated,November 1,1974, a copy of which is annexed herein and same made a part hereof.Exhibit"B"

(e) That on December 12,1973, this Court directed Respondent to furnish to Petitioners a breakdown of the unexplained deposits for the years ending December 31,1960 to 1965, that was lumped togethe for each and every year in question. A transcript of what took place in Court, annexed hereto and made a part hereof,exhibit "C"

(f) To datethe respondent failed to comply with the direction of the Court, as indicated in the minutes of December 12,1973, and als failed to comply with the notice served on him September 16,1974.

(g) These case are tentatively scheduled for January 20,1975, New York City Calendar for trial.

(h) That since the burden of proof to show that the Respondent' determinations were erroneous are on the Petitioners, it is respectfully submitted, that unless Petitioners are informed of the exact nature of each and every unexplained deposit claimed by the Respondent to be taxable, it will be practicably impossible for Petitioners to meet their burden or go to trial on the issues involved in these cases.

Furthermore, the Petitioners are entitled to the information requested of the Respondent, which information to date has not been furnished Petitioners.

(i) In view of the foregoing as aforesaid, it is respectfully urged upon this Court, to enter an order directing the Respondent the furnishing of an itemized statement of each and every unexplained deposit for each and every year as set forth in the Notice served upon him September 16,1974, indicating how the said Respondent determined that the Petitioners are subject to the alleged tax on those unexplained deposits, for the years involved in these cases; the Petitioners further respectfully requests that the cases herein as scheduled for the 20th day of January,1975, be continued to a later date, or until such time as the Respondent serves and files a breakdown of each and every deposit the Respondent claims to be taxable for each and every year,specifically stating which of such deposits are taxable for the years above indicated, and for such other and further and different relief as to this Court may seem just and proper in the premises, for which no prior application for the relief demanded herein has been made to this Court, by the undersigned.

(j) The Petitioners further urges upon this Court, that the Respondent be directed to furnish the breakdown of the unexplained deposits as directed by this Court, December 12,1973, itemized each amount for each year for each of the banks in lieu of the lumped amount as set forth in his notice of deficiency.

Dated,New York,N.Y.
December 12,1974.

FRANK L.SILVERMAN
Attorney for Petitioners
Office & P.O.Address
258 Broadway,New York,N.Y.

VERIFICATION

STATE OF NEW YORK)
CITY OF NEW YORK)SS.:
COUNTY OF NEW YORK)

FRANK L.SILVERMAN, being duly sworn, deposes and says:

That I have read the foregoing and that the same is true to my own knowledge and belief, except as to those matters therein stated to be alleged on information and belief and as to those matters deponent believes it to be true.

Sworn to before me this
12th day of December,1974.

Kathleen V. Rumsey

KATHLEEN V. RUMSEY
Notary Public, State of New York
No. 31-4504436
Qualified in New York County
Commission Expires March 30, 1975

Frank L. Silverman
FRANK L.SILVERMAN

A-256

TAX COURT OF THE UNITED STATES

FRANK L.SILVERMAN xx
xx
Petitioner, xx
v. xx
COMMISSIONER OF INTERNAL REVENUE, xx
xx
Respondent. xx
- x x

Docket No.3506-1968
Docket No.9003-1972

Exhibit "A"

FRANK L.SILVERMAN abd ANNA SILVERMAN, x
Petitioners, x
x
v. x
COMMISSIONER OF INTERNAL REVENUE', x
Respondent. x
- x

Docket No.9004-1972

OFFICE OF REGIONAL COUNSEL
RECEIVED
SEP 16 1974
INTERNAL REVENUE SERVICE
NORTH ATLANTIC REGION
NEW YORK

TO THE COMMISSIONER OF INTERNAL REVENUE:

S I R :

The undersigned on behalf of the Petitioners hereby respectfully requests the Commissioner(Respondent) as provided under Rule 71 of the United States Tax Court, that the said Commissioner furnish the following:

1. How the Commissioner determined that the Petitioners had a taxable income in the sum of $41,520.18, of unexplained deposits for the year 1960, and that he lists each and every deposit making up that sum;and that he itemize and lists those deposits that he determined taxable for said year.

2. How the Commissioner determined that the Petitioners had a taxable income in the sum of $21,972.11, for the year 1961,of unexplained deposits , that he lists each and every such deposit totaling to the sum of the aforesaid amount.

3. How the Commissioner determined that the Petitioners had a taxable income in the sum of $22,449.59,of unexplained deposits, for the year, 1962, and that he lists each and every such deposit making up that sum; and that he itemizes and lists those deposits that he determined taxable for the said year, as listed in the notice of deficiency.

4. How the Commissioner determined that Petitioners had a taxable income in the sum of $11,584.09, of unexplained deposits,for the year 1963, listing each and every such deposits making up that sum, and each be specifically itemized for said year, that the Commissioner claims to be taxable in his notice of deficiency.

5. How the Commissioner determined that the Petitioners had a taxable income in the sum of $22,653.24,of unexplained deposits for the year,1964, listing each and every deposit making up the said sum,and that each and every such deposit be specifically itemized and listed for the said year that the Commissioner claims to be taxable in his notice of deficiency, for the said year.

6. How the Commissioner determined that the Petitioners had a taxable income in the sum of $25,601.86,of unexplained deposits for the year, 1965, listing each and every such deposit making up the said sum for the said taxable year, listing each and every such deposit specificall and itemizing each and every such deposit as taxable for the said year as stated in his notice of deficiency.

To date the Commissioner(Respondent) failed to serve Petitione or Petitioners an itemized statement of the breakdown of the bank deposits totaling the sums listed above for each and every year, although these cases are tentatively are scheduled for January 20,1975,New York City Calendar.

That since the burden pf proof to show that the Commissioner's determinations were erroneous is on the Petitioners , it is respectfully submitted, that unless Petitioners are informed of the exact nature of each and every deposit claimed by the Commissioner to b taxable, it will be practicable impossible for Petitioners to meet thei burden or go to trial on the issues thereon.

That in view of the foregoing, it is respectfully prayed that the Court enter a formal order directing the Commissioner(Responde to serve and file an intemized statement of each and every bank deposit for the years, 1960,1961,1962,1963,1964 and 1965,showing how the Commissioner composed the total sums for all of the years as aforesatated, and the Petitioners further pray that the above cases be not scheduled for trial for January 20,1975, until such time as the Commissioner, serves and files a breakdown of each and every deposit of each and every bank account,for the respective years, and specifically stating which of such deposits are taxable for the years above indicated, and for such other and further and diffrent relief as to this Court may seem just andproper in the premises, for which no prior application for the relief demanded herein has been made by the undersigned.

Dated, New York City,N.Y.
September 5,1974.

FRANK L.SILVERMAN
Attorney for Petitioners
Office & P.O.Address
258 Broadway,New York,N.Y.100

STATE OF NEW YORK)
COUNTY OF NEW YORK)SS.:

FRANK L.SILVERMAN, being duly sworn,deposes and say that he has read the foregoing and that the same is true to hos own knwoledge and belief,except as to those matters stated to be alleged on information and belief and as to those matters deponent believes it to be true.

Sworn to before me this
5th day of September,1974.

KATHLEEN V. RUMSEY
Notary Public, State of New York
No. 31-4504436
Qualified in New York County
Commission Expires March 30, 1975

Kathleen V. Rumsey

FRANK L.SILVERMAN

SILVERMAN & SILVERMAN
Attorneys At Law
258 Broadway
New York,N.Y.10007

267-2760

Exhibit "B

November 1,1974.

Marvin E.Hagen
Regional Counsel
26 Federal Plaza
New York, N.Y.

Re: Silverman etal v Commissioner
Docket Nos.3506-68; 9003-4(1972)

Att.Michael A.Menillo,Esq.

Gentlemen:

The schedules submitted to the undersigned,by your offic October 22,1974, by hand, does not meet the requirements of the demand heretofore made upon the Commissioner,pursuant to Rule 71, of the United States Tax Court, in that said schedule or schedules does not answer the demands made therein. Kindly do so,at your earliest convenience.

Thanking you for attention in this matter, I remain

Respectfully yours,

FRANK L.SILVERMAN

UNITED STATES TAX COURT

FRANK L. SILVERMAN
Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE
Respondent

DOCKET NO. 3506-68
9003-72
9004-72

Exhibit "C"

(RECALL)

LOCATION OF HEARING: New York City, New York

DATE: December 12, 1973

BEFORE: Honorable Samuel B. Sterrett

APPEARANCES: Frank L. Silverman,
Petitioner

Michael A. Menillo,
Attorney for Respondent

PROCEEDINGS

start of tape o
New York, New York
12-12-73

THE CLERK: The Court is in session. Be seated. 3506-68, and related docket numbers, Frank L. Silverman and related Petitioners.

MR. MENILLO: Michael A. Menillo for respondent.

MR. SILVERMAN: Frank L. Silverman for Frank L. --

THE COURT: Gentlemen, I hope you spent a fruitful day or so?

MR. SILVERMAN: We did quite a few fruitful things -- that we tried to resolved, but it will take you a long time, Judge, until we're able to work out some plan where we come before the Court with some concrete proof. The way we have it now situated, we're not going to be able to pay all of this. It's so complicated -- so bewildered -- it's all mixed up, Judge -- not even funny. And my respondent would not force me without statement for the Court, I'm sure. He and I have worked on these things here. We're accomplishe almost every day by telephone or personally at the office. And I'm going to respectfully ask this case be put over around April or May. By that time, I hope, and the respondent thinks, we may be able to resolve a lot of things, so we don't burdenthe Court so much.

THE COURT: How much time have you spent the last day -- did you spend yesterday, for example, with the Government --

MR. SILVERMAN: We were in contact with each other.

The agent couldn't be there.

THE COURT: Well, what does that mean, a telephone call? I mean, that doesn't --

MR. SILVERMAN: Well, the agent couldn't make it. The respondent wanted the agent present at the time, to be able to go over these figures and these items.

MR. MENILLO: Your Honor, we've gotten to the point where the best thing to do is if we can get an agent, and we'll all work together. Mr. Silverman doesn't want to work just with the agent. He wants to come into our office here. So -- the agent was available yesterday afternoon, but Mr. Silverman wasn't. I had about ten phone calls back and forth; and at this point, we have a conference set for Monday afternoon; and the agent will come in. We've got six years here with, you know, cancelled checks and all kinds of records that Mr. Silverman has come in with. So, I think the best thing to do is to get the agent to go over this once, instead of -- we're just dragging it on. But hopefully, we will be able to dispose of this. And we have accomplished something. We've accomplished more in the last week or two, than we've accomplished since 1968. It's nothin conclusive yet, but --

MR. SILVERMAN: I'm going to further request that this Court assist me and aid me in directing the respondent to give me whatever breakdown of deposits they could possibly secure from the agent of the Internal Revenue people, so I may be able to pinpoint most of those items, so that it will obviate the necessity of spending weeks, maybe months, in this matter; so we may be able to resolve it, once and for all and be through with it.

THE COURT: Well, I'm sure respondent -- is this a bank deposit case?

MR. MENILLO: Yes, Your Honor.

THE COURT: Well, I'm sure the respondent will tell you specifically what items of deposits have been included in your income. There isn't any problem about that, is there, Mr. Menillo?

MR. MENILLO: No, Your Honor. Your Honor, I think Mr. Silverman will agree that I've given him everything he's asked for. I mean, I'm not keeping anything back. If I have it, he's welcome to it. I've prepared schedules. We've amended our pleadings when he's requested additional information. Whatever we have -- we want to work with him and if he's, you know, entitled to certain deductions and certain unexplained deposits can be explained, we want to do that. We don't want to charge him with anything he shouldn't be charged with.

MR. SILVERMAN: Judge, at the same time, they lumped every bank account for every year, together. How can I specifically point out which is which, and what belongs to what? You realize, and I know you're aware of the fact that special accounts, trust accounts are very very complicated to identify, unless we have leads to it. Then we can identify these deposits. The escrow funds, the clients' monies, not mine. True, these accounts were substantial, but it wasn't my money. I pinpointed quite a few of them as I --

THE COURT: Well, if the Government is giving you the details with respect to each deposit, what more can they do?

MR. SILVERMAN: No, Your Honor. They gave me a lump sum for a year, for account. They haven't given me details.

THE COURT: Well, I thought you told me you had details of the deposits that you've included as income?

MR. SILVERMAN: A lump sum.

THE COURT: Wait a minute. Let me --

MR. MENILLO: Your Honor, we've listed all the various accounts and the deposits for the year -- if you want to call it lumping it together -- the total deposits for the year. Then we eliminated what has been identified as transfers from other accounts, or dividend income which has been charged elsewhere. In other words, we have the total deposits for the year in a certain account, and then we have eliminations.

THE COURT: Well, did you have a breakdown of the total deposits?

MR. MENILLO: You mean each specific deposit?

THE COURT: Yeah. I mean, $2,000 on March 21st, $1500 on April 2nd?

MR. MENILLO: Not all of them. We may have some of them, Your Honor. I told Mr. Silverman I'll check. He just requested that now. I said, if I have it, I'll give it to him. I know some that we --

THE COURT: You must've got the total, it seems to me. You must have had a breakdown of the total?

MR. MENILLO: Right. But, you see --

THE COURT: Otherwise, how did you get the total?

MR. MENILLO: Well see, originally, Your Honor, there were criminal cases, and the work papers have been back and forth, and what I have left, I don't have all of them.

THE COURT: It's an old case, isn't it? What years are involved?

MR. SILVERMAN: '60, '61, '62 to '65.

THE COURT: That's not so old by some standards. But -- well, give him the breakdown. He ought to -- you ought to give him a breakdown of the deposits. I think the man's entitled to it, so he can explain each particular deposit if he can.

MR. MENILLO: He has records of the deposits that we don't have. He had the -- well, the passbooks and the savings accounts -- if I have it, I will.

MR. SILVERMAN: Judge?

THE COURT: Mr. Silverman, all the Government can do -- and I'm directing the Government now to give you the total breakdown they have of the deposits. Now, after they've done that, that's all they can do.

MR. SILVERMAN: That's what I've been asking the Government.

THE COURT: I just directed Mr. Menillo to do so.

MR. SILVERMAN: I want a breakdown of each deposit for each year, each taxable year, so I can come into Court and intelligently tell the Court what's what, and what belongs to what.

THE COURT: I understand.

MR. SILVERMAN: Thank you very much. Judge.

THE COURT: Do you understand, Mr. Menillo? Is there any problem about it?

MR. MENILLO: No, Your Honor. But if I have them, I'll be happy to give them to him. I've told him that.

MR. SILVERMAN: Judge, there must have been some basis for getting these figures, so somebody must have them. And Mr. Menillo is in a position to get them. I can't get it from the --

THE COURT: Well, he's going to give you the breakdown. If he doesn't have the breakdown, then that perhaps is a problem to them. But, he's going to give you what he's got, so that's all he can do.

MR. SILVERMAN: I appreciate it, Your Honor. Thank you very much.

THE COURT: Very well.

MR. SILVERMAN: Would Your Honor be good enough to put it off around April?

THE COURT: Well, I'll continue the case generally with a request to the chief judge, to put it on a calendar in April. The case is continued on a motion of petitioner without objection by respondent.

MR. SILVERMAN: Thank you very much. I'll be notified?

THE COURT: Pardon me?

MR. SILVERMAN: I'll be notified of the next calendar date?

THE COURT: Oh, yes. We won't keep it a secret. I promise.

MR. SILVERMAN: Thank you very much.

MR. MENILLO: Thank you, Your Honor.

(Whereupon the case was adjourned as described above)

A-268

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68
9003-72
9004-72 Name: FRANK L. SILVERMAN

The foregoing pages, numbers 1 through 8 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Patricia Schlairet on December 12, 1973 in the United States Tax Court located in New York City, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

Joan Willman
(Name)

December 28, 1973
(Date)

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,

Petitioner,

Docket No.3506-1968
Docket No.9003-1972

- v -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

- - - - - - - - - - - - - - - - - - - -

FRANK L. SILVERMAN and ANNA SILVERMAN

Petitiones,

Docket No.9004-1972

- v -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

- - - - - - - - - - - - - - - - - - - -

MOTION ON BEHALF OF THE PETITIONERS
FOR AN ORDER DIRECTING THE RESPONDENT
TO SERVE AND FILE THE ANSWERS DEMANDED
OF THE SAID COMMISSIONER PURSUANT TO
NOTICE DULY SERVED ON SAID COMMISSIONER
BY THE PETITIONERS HEREIN.

(a) The Petitioners move this Court, for an order directing the Respondent to furnish Petitioners the answers to questions 1 to 22 inclusive, heretofore served on said Respondent, the 30th day of April,1975, pursuant to Rule 71.

(b) The answers requested of the Respondent deals with the notice of deficiency heretofore served by the said Respondent upon the

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Petitioners for the taxable years 1960 to 1965 inclusive.

(c) On the 30th day of April, 1975, the undersigned duly served upon Respondent a demand in writing requesting that the said Respondent furnish answers to questions as itemized in said notice from 1 to 22 inclusive. The original of said demand annexed hereto and same made a part hereof together with the affidavit of service of said demand.

(d) The request for the information made by the Petitioners herein was pursuant to Rule 71 of the United States Tax Court Rules.

Rule 71- ". . . . The Party, on whom the interrogatories have been served, shall serve a copy of his answer, and objections if any, upon the propounding party within 45 days after the service of the interrogatories upon him."

to date the said Respondent failed to comply with said demand though more than 45 days has since elapsed since the service of same.

(e) These cases are tentatively scheduled for October 20, 1975, New York City Calendar for trial.

(f) That since the burden of proof to show that the Respondent's determination were erroneous are on the Petitioners, it is respectfully submitted, that unless Petitioners are furnished the answers to the questions enumerated in the notice heretofore served on the Respondent from 1 to 22 inclusive, regarding the taxable years 1960 to 1965 inclusive it will be practically impossible for Petitioners to meet their burden or go to trial on the issues involved in these cases; furthermore the Petitioners are entitled to the information requested of the Respondent, which information to date has not been furnished Petitioners.

(g) The information sought for herein is necessary and material to properly prepare for trial and meet the issues and to avoid surprises during the course of the trial in these cases.

(h) That the information sought for herein is unavailable to the Petitioners herein and said information is in the possession of the respondent.

(i) That the Petitioners have no other way of securing the information sought for herein other that the method provided for by Rule 71 of the United States Tax Court Rules, as aforesaid.

(j) That in view of all of the foregoing as aforesaid, it is respectfully urged upon this Court, to enter an order directing the Respondent to answer each and every question of the Petitioners' demand dated, April 30,1975, from 1 to 22 thereof; the Petitioners further respectfully request that the cases herein scheduled for October 28,1975, trial, New York City Calendar be continued to a later date, or until such time after respondent furnishes and files the information requested by the Petitioners herein.

WHEREFORE, Petitioners respectfully prays that the Court issue an order directing the Respondent to furnish the answers to the questions above referred to in the notice of April 30,1975, and such other and further and different relief as to this Court may seem just and proper in the premises.

Dated, New York, N.Y.
June 18,1975.

Frank L. Silverman
FRANK L. SILVERMAN
Attorneys for Petitioners
Office & P.O. Address
258 Broadway
New York, N.Y. 10007
(212) 267-2760

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,

Petitioner,

- v -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.3506-1968
Docket No.9003-72

- -

FRANK L. SILVERMAN and ANNA SILVERMAN,

Petitioners,

- v -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.9004-1972

- -

VERIFIXCATION

STATE OF NEW YORK)
CITY OF NEW YORK)SS.:
COUNTY OF NEW YORK)

FRANK L. SILVERMAN, being duly sworn, deposes and says; that he has read the foregoing and that the same is true to his own knowledge and belief, except as to those matters stated to be alleged on information and belief and as to those matters deponent believes it to be true.

Sworn to before me this
18th day of June, 1975.

Frank L. Silverman
FRANK L. SILVERMAN

KATHLEEN V. RUMSEY
Notary Public, State of New York
No. 31-4504436
Qualified in New York County
Commission Expires March 30, 1977

A-273

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,

Petitioner,

v

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 3506-1968
Docket No. 9003-1972

- -

FRANK L. SILVERMAN & ANNA SILVERMAN

Petitioners,

v

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 9004-1972

- -

TO THE COMMISSIONER OF INTERNAL REVENUE:

SIR;

The undersigned on behalf of the Petitioner and/or Petitioners respectfully requests that the Commissioner furnish the following:

1. The records and/or memoranda of the interviews with witnesses and/or others which the Commissioner will use on the trial of the above matter.

2. Where the said Commissioner secured any of the information regarding the above matter, for the that the said Commissioner will use at the trial of the above matter.

3. The Commissioner to furnish copies of all writings and/or memoranda of the any interview or interviews secured by the said Commissioner in connection with the above matter, including the names and addresses and their statements in the possession of said Commissioner.

4. The Commissioner furnish all memoranda and/or writings as to how he determined the Petitioner had a taxable income for the year 1960, in the sum of $41,520.18.

5. That the information sought hereinabove by the Petitioner is unkown to the Petitionerand that said Petitioner has no means of securing same, and that the said information has a bearing on the subject matter of the case and that the ssid information is in the control and possession of the said Commissioner.

6. The request made on behalf of the Petitioner is made in good faith and that same will be used by the Petitioner in the trial of said matter.

7. The Commissioner shall produce and furnish Petitioner an itemized statement of each and item for the year 1960, making up the sum of $41,520.18,as claimed by the said Commissioner to be taxable, to the Petitioner.

8. The Commissioner shall identify each and every amount claimed by him to be taxable for the year 1960, with respect the sum $41,5

9. The Petitioners repeat,reallege,reiterate and restate paragraphs "1" to "8" inclusive with the same force and effect as if herein set forth in full and at length with respect to the taxable year 1961, as if incorporated in this paragrph.,the sum of $21,972.11.

10. The Petitioners repeat,reallege,reiterate and restate paragraphs "1" to "8" inclusive with the same force and effect

as if herein set forth in full and at length with respect to the taxable year 1962, as if incorporated in this paragraph with respect the sum of $22,449.59.

11. The Petitioners repeat,reallege,and reiterate paragraphs "1" to "8" inclusive with the same force and effect as if herein set forth in full and at length with respect to the taxable year 1963, as if incorporated in this paragraph with respect to the sum of $11,584.09.

12. The Petitioners repeat,reallege,reiterate and restate paragraphs "1" to "8" inclusive with the same force and effect as if herein set forth in full and at length with respect to the taxavle year 1964,as if incorporated in this paragraph with respect to the sum of $22,653.24.

13. The Petitioners repeat,reallege,reiterate and restate paragraphs "1" to "8" inclusive with the same force and effect as it herein set forth in full and at length with respect to the taxable year 1965, as if incorporated in this paragraph with respect to the sum of $25,601.86.

14. The Commissioner to furnish for each and every year above stated the writings and/or schedules of how the said Commissioner determi the sum of $41,520.18, for the year, 1960.

15. The Commissioner to furnish for each and every year above stated the writings and/or schedules of how the said Commissioner determi the sum of $21,972.11, for the year 1961.

16. The Commissioner to furnish for each and every year above state the writings and/or schedules of how the said Commissioner determine the sum of $22,449.59, for the year 1962.

17. The Commissioner to furnish for each and every year above stated the writings and/or schedules how the said Commissioner determined

the sum of $11,584.09, for the year 1963.

18. The Commissioner to furnish to the Petitioners for each and every year above stated the writings and/or schedules how the said Commissioner determined the sum of $22,653.24, for the year 1964.

19. The Commissioner to furnish Petitioners for each and every year above stated the writings and/or schedules how the said commissioner determined the sum of $25,601.86, for the year, 1965.

20. The information sought herein is necessary and material to proprly prepare for trial and to avoid surprises during the course of the trial herein.

21. That the information sought herein is unavailable to the Petitioners herein and said information is in the possession of the Commissioner.

22. That the Petitioners have no other way of securing the information sought for herein other than this method.

WHEREFORE, in view of all of the aforesaid, it is respectfully prayed that the information sought for herein be and same furnished by the Commission.

Dated, New York, N.Y.
April 30, 1975.

FRANK L. SILVERMAN

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

FRANK L. SILVERMAN, being duly sworn, deposes and says that he has read the foregoing and that the same is true to his own knowledge and belief, except to those matters stated to be alleged or information and belief and as to those matter he believes it to be true.

Sworn to before me this
30th day of April, 1975.

FRANK L. SILVERMAN

[illegible] 977

AFFIDAVIT OF MAILING

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

FRANK L. SILVERMAN, BEING DULY SWORN, DEPOSES AND SAYS:

That I am over the age of twenty-one years old and reside in the City of new York, and that on the 30th day of April, 1975, deponent mailed the within upon Michael A. Menillo, Esq. attorney for the Commissioner at 26 Federal Plaza, New York, N.Y., the address designated by the said attorney for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post Office depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
30th day of April, 1975.

FRANK L. SILVERMAN

[illegible]
Qualified in New York County
Commission Expires March 30, 1977

A-278

UNITED STATES TAX COURT
WASHINGTON

FRANK L. SILVERMAN, et al, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No. 3506-68 9003-72 9004-72

ORDER

These cases were called at New York, New York, on September 22, 1975, for hearing on motion by petitioners for an order directing the respondent to serve and file the answers demanded of the said Commissioner by the petitioners herein filed June 19, 1975, and set for hearing at this time by the Court's order dated June 25, 1975. Frank L. Silverman appeared for petitioners to argue on behalf of the motion for an order. After due consideration of the Court's record in these cases and for cause appearing in the transcript of the proceedings, it is

ORDERED that petitioners' motion for an order filed June 19, 1975, is hereby denied.

(signed) William H. Quealy

Judge

Dated: New York, New York,
September 22, 1975.

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[illegible]

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Tax Court of the United States

WASHINGTON, D. C.

A-279

FRANK L.SILVERMAN
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No 3506-68
9003-72
9004-72

2 29

SUBPOENA

To The Judicial Conference of the State of New York
270 Broadway, New York, N.Y. 10007

YOU ARE HEREBY COMMANDED to appear before the Tax Court of the United States

(or the name and official title of a person authorized to take depositions)

at 9:30 A.M (Time) on the June 29th (Date) day of June, 1976. (Month)

at 26 Federal Plaza, New York, N.Y. 10007, Second Floor, Tax Court, (Place)

then and there to testify on behalf of Petitioner (Petitioner) or (Respondent) in the above-entitled case,

and to bring with you All the closing statements of the accident cases filed by Frank L. Silverman, for the year 1960, Commencing January 1, 1960 to and including December 31, 1960.

(Use reverse if necessary)

and not to depart without leave of the Court.

Date New York, N.Y., June 28, 1976

FRANK L.SILVERMAN
258 Broadway, New York, N.Y.
(212) 267-2760
Attorney for (Petitioner) (Respondent)

Alan B. (Name) (Title)

RETURN ON SERVICE

The above-named witness was summoned on the .... day of ...., 19....
at .... by delivering a copy of this subpoena to h........ and, if a witness for the petitioner, by tendering fees and mileage to h........ pursuant to Rule 60 of the Rules of Practice of the Tax Court.

Dated .... Signed ....

Subscribed and sworn to before me this .... day of ...., 19....

(Name and Title)

[SEAL]

FORM 4
NOV. 196

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—235-372

-o-v-e-r 917-811

UNITED STATES TAX COURT

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket Nos. 3506-68 and
) 9003-72
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

FRANK L. SILVERMAN and)
ANNA SILVERMAN,)
)
Petitioners,)
)
v.) Docket No. 9004-72
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

SUPPLEMENTAL STIPULATION OF FACTS

The parties hereby stipulate and agree for purposes of these cases the following facts and exhibits attached hereto and made a part hereto may be taken as true subject to the rights of the parties to introduce other and further evidence not inconsistent with this supplemental stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said supplemental stipulation and attached exhibits as they may deem irrelevant or immaterial.

10. Respondent concedes that the unidentified deposits to the East River Savings Bank (hereinafter "East River") (account number 3374) in the amount of $3,291.22 for the year 1960, which are all the unexplained deposits to that account except for the deposit in the amount of $120.63 made on August 30, 1960, should be eliminated from respondent's computation of unexplained deposits. Further, the following deposits are also eliminated:

East River (account number 37218)	
10/19/60	$ 200.00
Merchant's Bank of New York (Regular)	
2/25/60	$ 230.04
3/9/60	230.04
Merchant's Bank of New York (Special)	
9/7/60	$ 245.06
11/30/60	245.06
12/14/60	245.06
Total	$1,395.26

Petitioners concede that this adjustment eliminates Frank L. Silverman's salary income for the year 1960, except for the check he received on November 16, 1960 in the amount of $245.06.

11. For the year 1960, respondent has eliminated from respondent's computation of unexplained deposits dividends deposited in the Merchant's Bank of New York (hereinafter 'Merchant's Bank") (Special account) which are listed as follows:

Date of Deposit	Amount	Corporation
12/20/60	$120.00	American Standard
12/20/60	52.75	Ashland Oil
12/20/60	54.00	Detroit Steel
Total	$226.75	

12. For the year 1960, respondent has eliminated from respondent's computation of unexplained deposits the deposit into the Manhattan Savings Bank (account number 103687) made on March 25, 1960 in the amount of $25.00. This deposit was a transfer from the Merchant's Bank (regular account).

13. For the year 1960, respondent has eliminated from respondent's computation of unexplained deposits the deposit into the Merchant's Bank (special account) made on July 19, 1960 in the amount of $500.00. This

deposit was a transfer from the Emigrant Savings Bank (account number 1551318).

14. Respondent concedes that the unidentified deposit in East River (account number 37218) made on April 25, 1961 in the amount of $3,120.03 should be eliminated from respondent's unexplained deposit computation. Attached hereto as Exhibit AR are the documents upon which this elimination was made.

15. Respondent concedes that the deposit into the Merchant's Bank (regular account) made on January 3, 1961 in the amount of $245.06 was a deposit of a salary check and should be eliminated from respondent's unexplained deposits computation. Petitioners concede that respondent has now eliminated all his salary for the year 1961.

16. Respondent concedes that the deposit in the Merchant's Bank (special account) made on October 20, 1961 in the amount of $685.00 was the gross recovery in the "Bingham" case and should be eliminated from respondent's unexplained deposits computation.

17. Respondent concedes that the deposit in the Merchant's Bank (special account) made on December 8, 1961 in the amount of $800.00 was a transfer from the

Chase Manhattan Bank (account number 24-14500) and should be eliminated from respondent's unexplained deposit computation.

18. Respondent concedes that the deposit into the Merchant's Bank (special account) made on March 22, 1962 in the amount of $54.00 was a dividend from Detroit Steel and should be eliminated from respondent's unexplained deposits computation.

19. Respondent concedes that the deposit into the Chase Manhattan Bamk (account number 24-14500) made on September 27, 1962 in the amount of $120.00 was a dividend from American Standard Corporation and should be eliminated from respondent's unexplained deposits computation.

20. Petitioners concede that all salary for the year 1962 has been eliminated.

21. Respondent concedes that the deposit into the Franklin Society Federal Savings Bank (account number 781521) made on October 2, 1963 in the amount of $75.00 was a dividend from Spartan Industries Inc. and should be eliminated from respondent's unexplained deposit computation.

22. Petitioners concede that all salary for the year 1963 has been eliminated.

23. Respondent concedes that the deposit into the Chase Manhattan Bank (account number 24-14500) made on April 1, 1964 in the amount of $100.00 was a dividend from Republic Corp. and should be eliminated from respondent's unexplained deposits computation.

24. Petitioners concede that all salary for the year 1964 has been eliminated.

25. Respondent concedes that the deposit into the East River Savings Bank (account number 3374) made on January 7, 1965 in the amount of $200.00 was a partial deposit of salary and should be eliminated from respondent's unexplained deposits computation. Petitioners concede that all salary for 1964 has now been eliminated.

26. Respondent concedes that the deposit into the Merchant's Bank (special account) made on September 17, 1965 in the amount of $52.50 was a dividend from Sheller Manufacturing Corp. and should be eliminated from respondent's unexplained deposits computation.

27. Respondent concedes that the deposit into the Manhattan Savings Bank (account number 103687) made on October 27, 1965 in the amount of $1,680.00 was a payment for a stock tender received from Alex Forst and Sons, Inc. and should be eliminated from respondent's unexplained deposits computation.

28. Petitioners concede that all salary for the year 1965 has been eliminated.

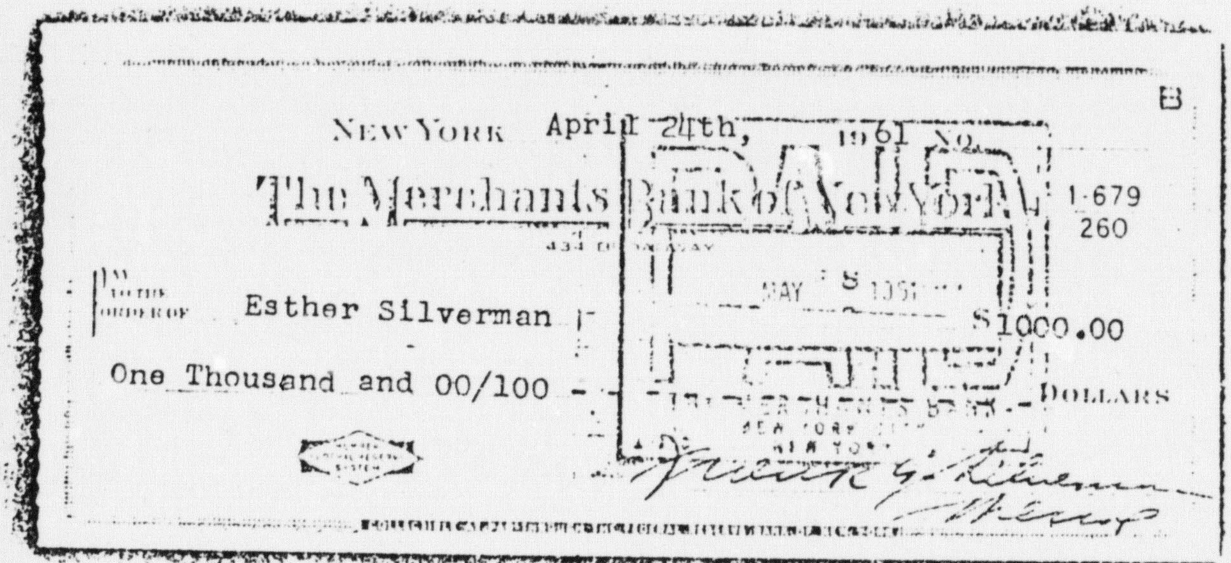
FRANK L. SILVERMAN
Petitioner
58-19 262nd Street
Little Neck, New York

FRANK L. SILVERMAN
Counsel for Petitioner
ANNA SILVERMAN
58-19 262nd Street
Little Neck, New York

MEADE WHITAKER
Chief Counsel
Internal Revenue Service.

By: (Sgd) EDWARD H. HANCE-B G
EDWARD H. HANCE
Actg. Asst. Regional Counsel
26 Federal Plaza (12th Floor)
New York, New York 10007
Tel. No. 212-264-0266.

JUL 7 1976



B

NEW YORK April 24th, 1961 No.

The Merchants Bank of New York 1-679
260

434 Broadway

PAY TO THE ORDER OF Esther Silverman $1000.00

One Thousand and 00/100 DOLLARS

PAID
MAY 8 1961
THE MERCHANTS BANK
NEW YORK CITY
NEW YORK

EXHIBIT AR

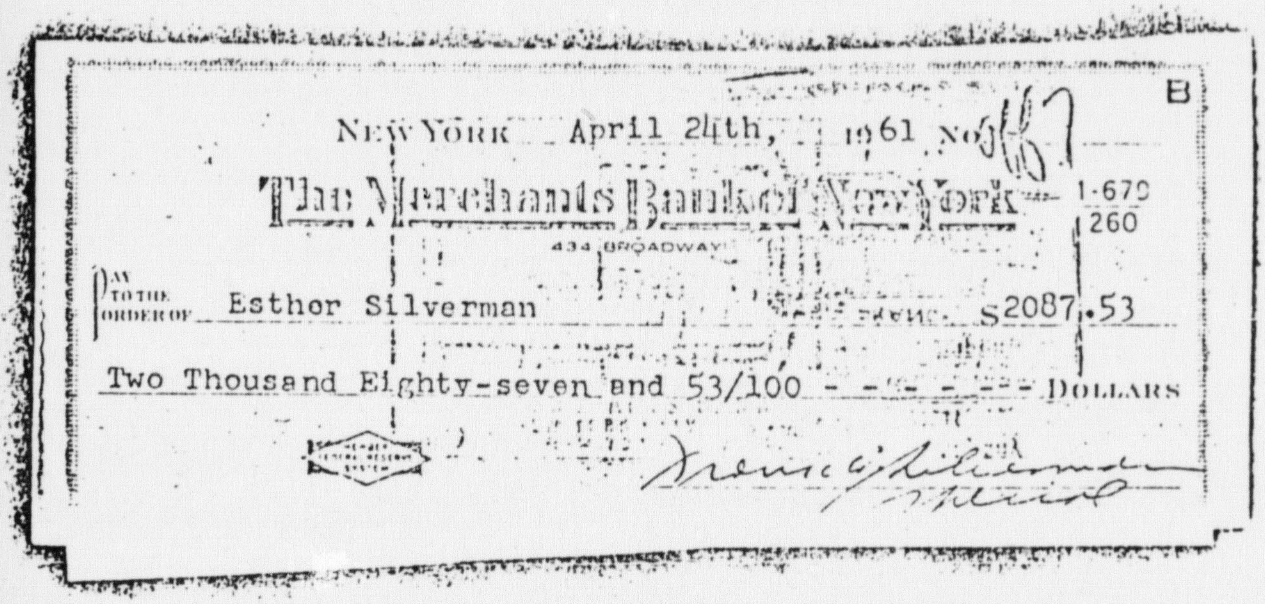
BEST COPY AVAILABLE

Re: Silverman v Silverman
In full for fees and
disbursements.

Esther Silverman

Frank G. Silverman

MAY 8 61
RECEIVED ... THROUGH
NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
FEDERAL RESERVE BANK
OF NEW YORK
1-679 79



B

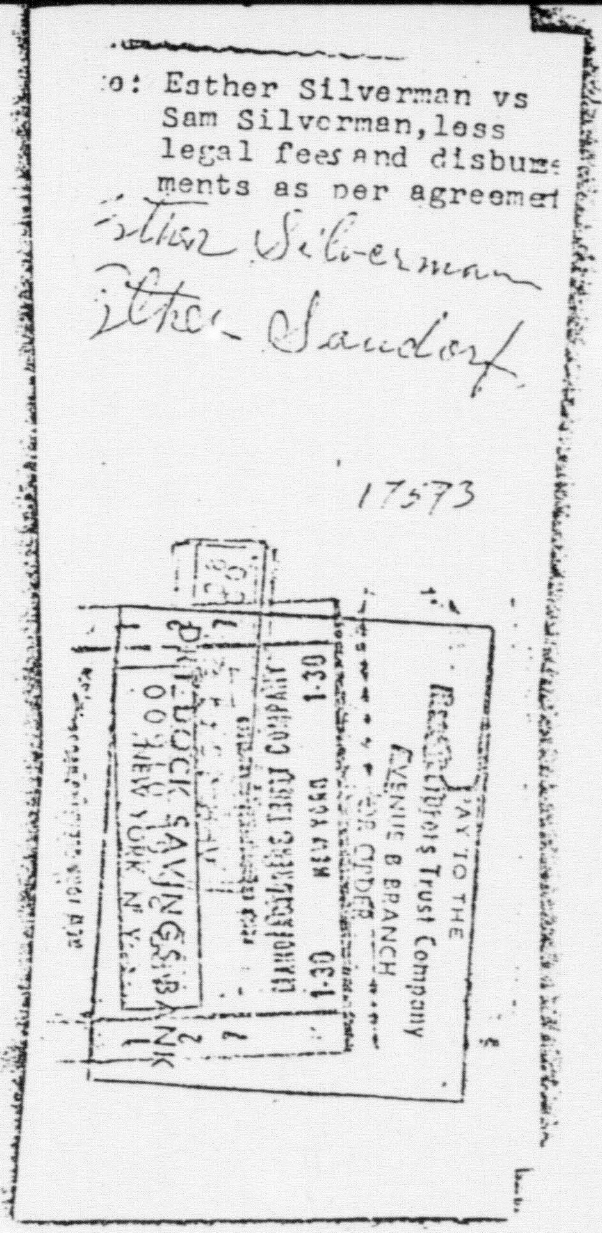
NEW YORK April 24th, 1961 No 67

The Merchants Bank of New York 1-679/260

434 BROADWAY

PAY TO THE ORDER OF Esthor Silverman $2087.53

Two Thousand Eighty-seven and 53/100 - - - - - - DOLLARS



o: Esther Silverman vs
Sam Silverman, less
legal fees and disbursements as per agreement

Esther Silverman

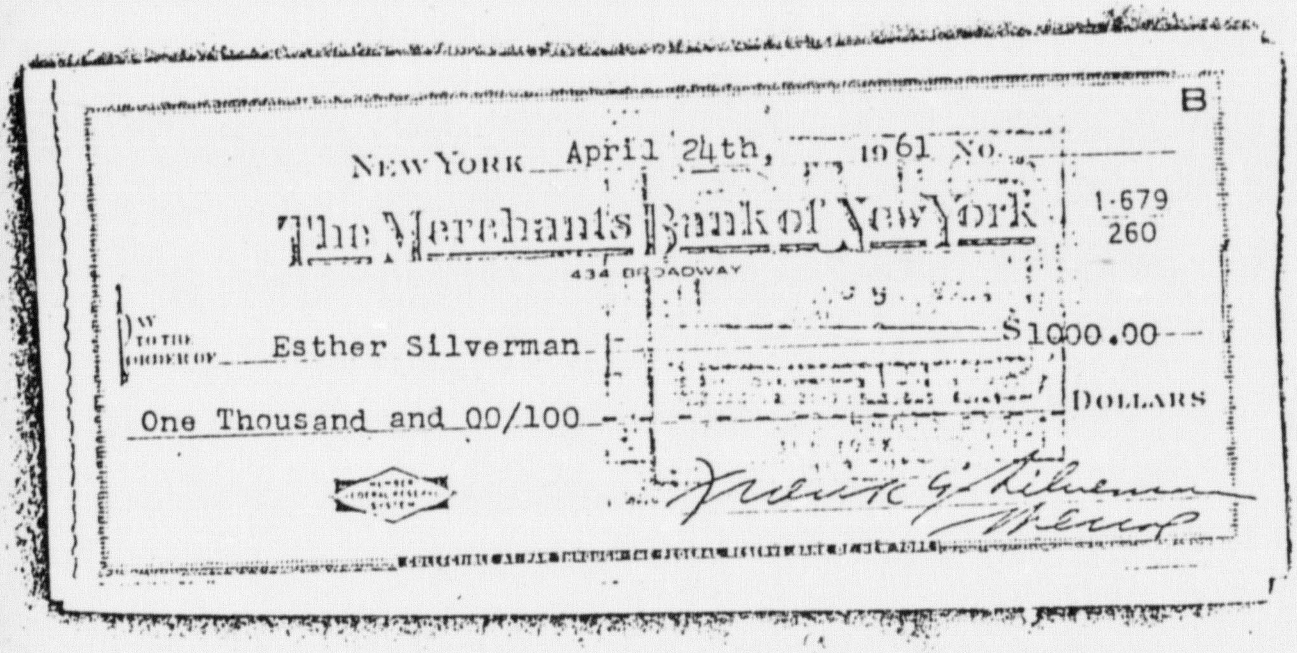
Esther Sandorf

17573

PAY TO THE
[illegible] Trust Company
AVENUE B BRANCH
OR ORDER

MANUFACTURERS TRUST COMPANY
1-30 NEW YORK 1-30

DRY DOCK SAVINGS BANK
NEW YORK N.Y.



B

NEW YORK April 24th, 1961 No.

The Merchants Bank of New York

434 BROADWAY

1-679
260

PAY TO THE ORDER OF Esther Silverman $1000.00

One Thousand and 00/100 DOLLARS

MEMBER FEDERAL RESERVE SYSTEM

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF NEW YORK

Re: Silverman v Silverman
In full for fees and
disbursements.

Esther Silverman

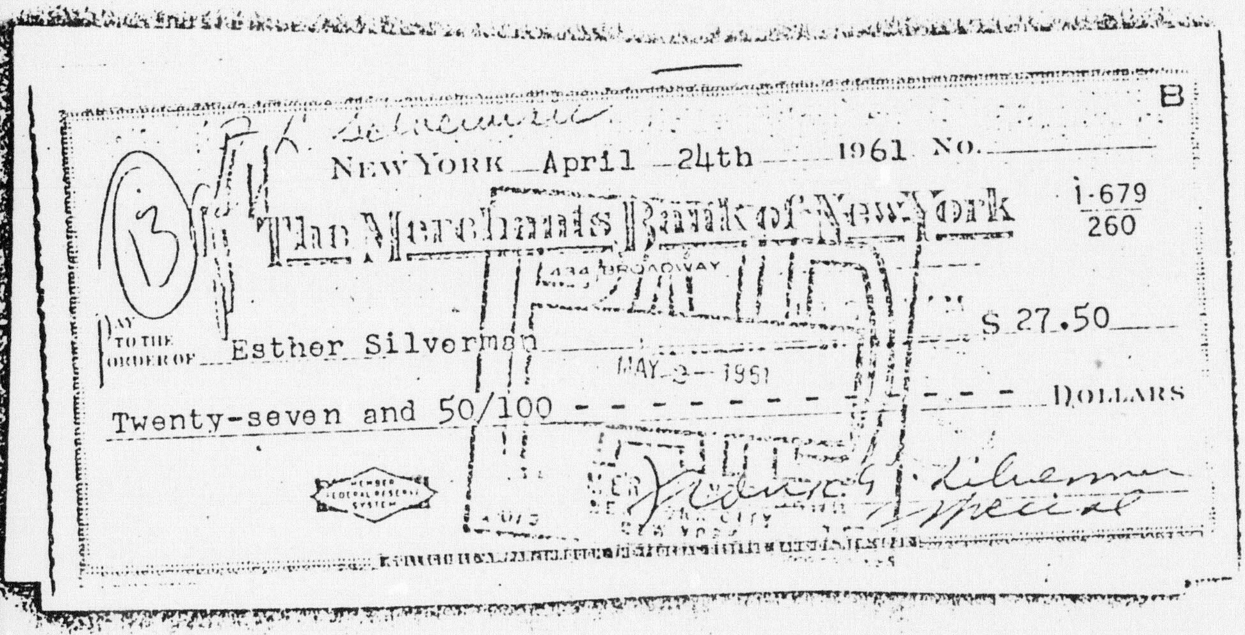
Frank G. Silverman

RECEIVED PAYMENT THROUGH
NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
FEDERAL RESERVE BANK
OF NEW YORK
1-679 79

MAY 8 61

PRIOR ENDORSEMENTS GUARANTEED
THE [illegible] BANK OF NEW YORK

D



B

13

NEW YORK April 24th 1961 No.

The Merchants Bank of New York 1-679/260

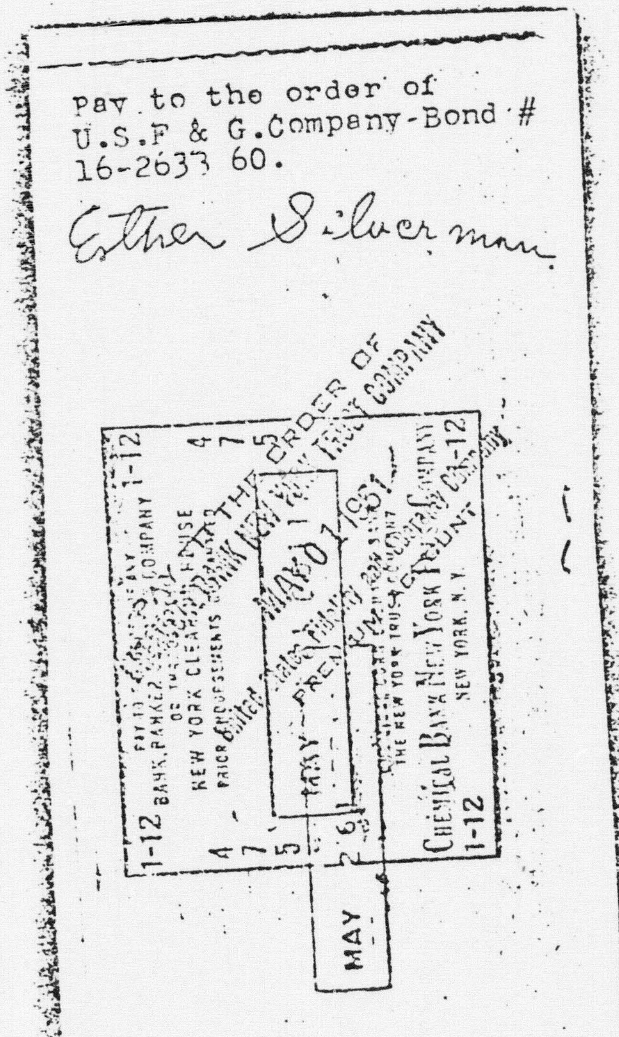
PAID
434 BROADWAY
MAY 3 1961

PAY TO THE ORDER OF Esther Silverman $ 27.50

Twenty-seven and 50/100 DOLLARS

MEMBER FEDERAL RESERVE SYSTEM

A-294



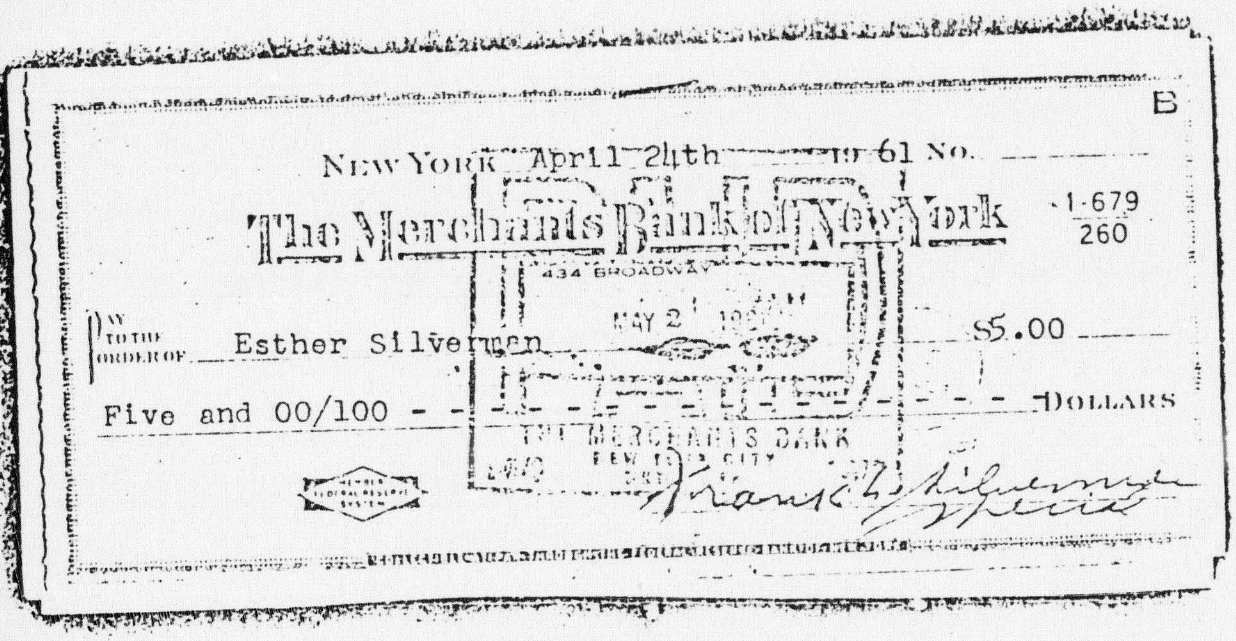
Pay to the order of
U.S.F & G.Company-Bond #
16-2633 60.

Esther Silverman

1-12
PAY TO [illegible] ANY
BANK, BANKER OR TRUST COMPANY
OF THE
NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
THE NEW YORK TRUST COMPANY
CHEMICAL BANK NEW YORK TRUST COMPANY
NEW YORK, N.Y.
1-12
4
7
5

PAY TO THE ORDER OF
CHEMICAL BANK NEW YORK TRUST COMPANY
MAY 01 1951
United States Fidelity and Guaranty Company
PREMIUM ACCOUNT

MAY 26



B

NEW YORK April 24th 1961 No.

The Merchants Bank of New York

1-679
260

PAY TO THE ORDER OF Esther Silverman $5.00

Five and 00/100 - - - - - - - - - - - - - - - - DOLLARS

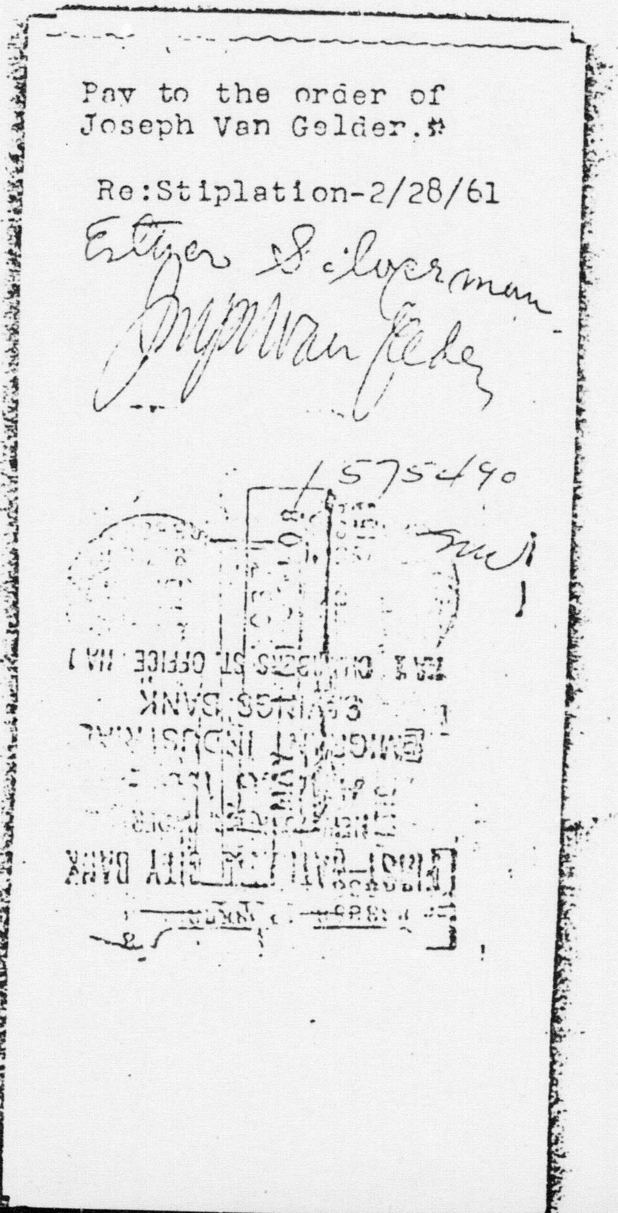
MEMBER FEDERAL RESERVE SYSTEM

Frank Silverman

434 BROADWAY

MAY 2

THE MERCHANTS BANK
NEW YORK CITY



Pay to the order of
Joseph Van Gelder.

Re:Stiplation-2/28/61

Esther Silverman

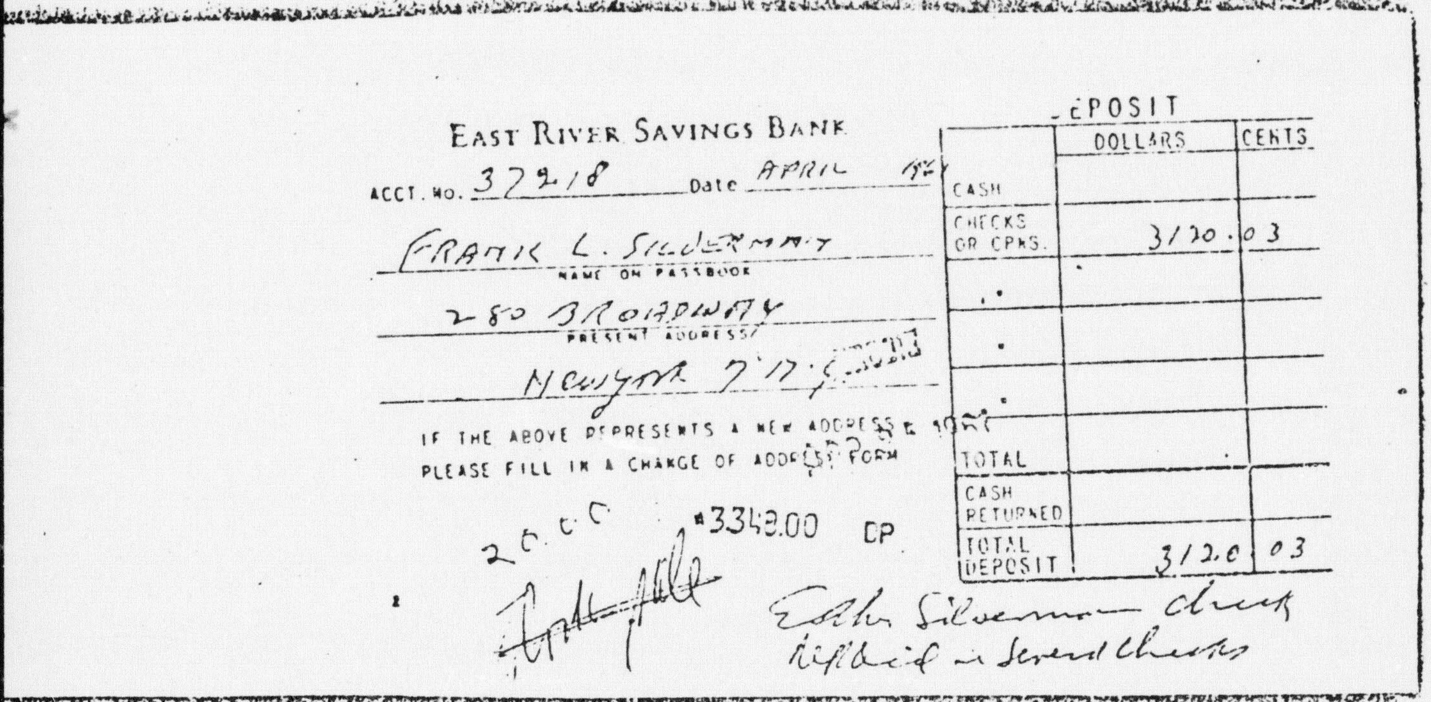
Joseph Van Gelder

1575490

FIRST NAT [illegible] CITY BANK

MAY

EMIGRANT INDUSTRIAL
SAVINGS BANK
CHAMBERS ST. OFFICE



EAST RIVER SAVINGS BANK

ACCT. NO. 37218 Date APRIL [illegible]

FRANK L. SILVERMAN
NAME ON PASSBOOK

280 BROADWAY
PRESENT ADDRESS

NEWYORK N.Y.

IF THE ABOVE REPRESENTS A NEW ADDRESS
PLEASE FILL IN A CHANGE OF ADDRESS FORM

DEPOSIT

	DOLLARS	CENTS
CASH		
CHECKS OR CPNS.	3120	03
TOTAL		
CASH RETURNED		
TOTAL DEPOSIT	3120	03

20.00

*3343.00 CP

Esther Silverman check
reflected in several checks

UNITED STATES TAX COURT

FRANK L. SILVERMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 3506-68
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1960 in the amount of $5,874.20; and

That there is an addition to the tax due from the petitioner for the taxable year 1960, under the provisions of Int. Rev. Code of 1954, §6653(b), in the amount of $2,937.10.

(signed) William H. Quealy
Judge.

Entered: JUL 12 1976

* * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioner waives the restrictions, if any, contained in the applicable Internal Revenue laws on the assessment and collection of the deficiency and addition to the tax, plus statutory interest.

/s/ Frank L. Silverman
FRANK L. SILVERMAN
58-19 262nd Street
Little Neck, New York

MEADE WHITAKER
Chief Counsel
Internal Revenue Service.

By: (Sgd) EDWARD H. HANCE-B G
EDWARD H. HANCE
Actg. Asst. Regional Counsel
26 Federal Plaza (12th Floor)
New York, New York 10007
Tel. No. 212-264-0413.

JUN 25 1976

UNITED STATES TAX COURT

FRANK L. SILVERMAN,)
)
Petitioner,)
)
v.) Docket No. 9003-72
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioner for the taxable years 1961 and 1962 in the amounts of $18,654.07 and $14,468.00, respectively; and

That there are additions to the taxes due from the petitioner for the taxable years 1961 and 1962, under the provisions of Int. Rev. Code of 1954, §6653(b), in the amounts of $9,327.04 and $7,234.00 respectively.

(signed) William H. Quealy
Judge.

Entered: JUL 12 1976

* * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioner waives the restrictions, if any, contained in the applicable Internal Revenue laws on the assessment and collection of the deficiencies and additions to the taxes, plus statutory interest.

/s/ Frank L. Silverman
FRANK L. SILVERMAN
58-19 262nd Street
Little Neck, New York

MEADE WHITAKER
Chief Counsel
Internal Revenue Service.

By: (Sgd) EDWARD H. HANCE-B G
EDWARD H. HANCE
Actg. Asst. Regional Counsel
26 Federal Plaza (12th Floor)
New York, New York 10007
Tel. No. 212-264-0413.

JUN 25 1976

UNITED STATES TAX COURT

FRANK L. SILVERMAN and)
ANNA SILVERMAN,)
)
Petitioners,)
)
v.) Docket No. 9004-72
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

DECISION

Pursuant to agreement of the parties in this case, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioners for the taxable years 1963, 1964 and 1965 in the amounts of $6,819.82, $8,427.47 and $12,480.22, respectively; and

That there are additions to the taxes due from the petitioners for the taxable years 1963, 1964 and 1965, under the provisions of Int. Rev. Code of 1954, §6653(b), in the amounts of $3,409.91, $4,213.74 and $6,240.11, respectively.

(signed) William H. Quealy
Judge.

Entered: JUL 12 1976

* * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

It is further stipulated that, effective upon the entry of this decision by the Court, petitioners waive the restrictions, if any, contained in the applicable Internal Revenue laws on the assessment and collection of the deficiencies and additions to the taxes, plus statutory interest.

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

/s/ Frank L. Silverman
FRANK L. SILVERMAN
Petitioner
58-19 262nd Street
Little Neck, New York

By: (Sgd) EDWARD H. HANCE-B G
EDWARD H. HANCE
Actg. Asst. Regional Counsel
26 Federal Plaza, (12th Floor)
New York, New York 10007
Tel. No. 212-264-0413.

JUN 25 1976

/s/ Frank L. Silverman
FRANK L. SILVERMAN
Counsel for Petitioner
ANNA SILVERMAN
58-19 262nd Street
Little Neck, New York

TAX COURT OF THE UNITED STATES

FRANK L. SILVERMAN,

Petitioner,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 3506-68
Docket No. 9003-72

- -

FRANK L. SILVERMAN and ANNA SILVERMAN,

Petitioners,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 9004-72

- -

SIRS:

Upon the annexed affidavit of FRANK L. SILVERMAN, duly sworn to the 12th day of July, 1976, and the exhibits annexed and upon all the pleadings and proceedings had herein, the undersigned will move this Court for an order vacating and setting aside the stipulation of settlement of July 12, 1976, and for such other and further and different relief as to this Court may seem just in the premises and that the Court place the above matters before the Court for the conclusion of the trial and for such other and further and different relief as to this Court may be just and proper.

Yours, etc.,
FRANK L. SILVERMAN

TAX COURT OF THE UNITED STATES

FRANK L.SILVERMAN, x
x
Petitioner, x Docket No.3506-68
x Docket No.9003-72
-v-
x
COMMISSIONER OF INTERNAL REVENUE, x
x
Respondent.
x
- x
FRANK L.SILVERMAN & ANNA SILVERMAN, x
Docket No.9004-72
x
Petitioners,
x
-v- x
x
COMMISSIONER OF INTERNAL REVENUE,
x
Respondent. x
- x

STATE OF NEW YORK)
CITY OF NEW YORK)SS.:
COUNTY OF NEW YORK)

FRANK L.SILVERMAN, being duly sworn, deposes and say:

That I am the attorney for the Petitioners above nam and make this affidavit in support of an application on behalf of the Petitioners to vacate the stipulation of settlement executed in Court in the above matter July 7,1976, for the following reasons:

1. Your deponent was in a state of collapse from exhaustion in the morning of July 7,1976, and did become very ill at that time.

2. That the said stipulation was not executed by

deponent under normal conditions.

3. Further the respondent's attorney in the morning session of the Court indicated in writing that the 1960 tax would around $5300.00 and in the afternoon session the tax was stated at 5874.20.

4. The respondent's attorney failed to give petitioners credit for the funds that were paid out to the clients whose cases were settled as the closing statements that was had by the attorney for the said respondent.

5. Deponent respectfully submits a list of settled cases where payments are indicated that was made to clients and closing statements for such payment was duly filed with the Judicial Conference as required by applicable provisions of law and rules in such matters.

6. Deponent submitting statements of such payments and a list of clients to who, such payments were made,as exhibit "A","B","C","D" and "E".

7. That in addition thereto respondent's attorney submitted exhibit 19-S wherein he lists only the receipt of fee by deponent but fails to give credit for the payments made to clients during the course of the year.

8. That the exhibit 19-S, list the fees paid to
deponentfor the year 1961- $13,301.60 , and the fees paid to depone
for the years . . . .1962- 11,421.67, and the fees paid to deponen
for the year . . . . 1963- 10,535.75, and the fees paid to deponen
for the year . . . . 1964- 3,532.57, and the fees paid to deponent
2
for the year . . . . 1965- 4,307.67,thus making a total sum of4409
Total 44,099.26

9. Deponent attaches said exhibit 19-S and make same a part hereof.

9. Deponent's attorney did not give credit to petitioners a like sum of $44,099.26, as the unexplained deposits from the various cases, that became exaplainable and so much less taxable in this matter.

10. The respondent's attorney was duty bound to give and make the necessary adjustment when same became apparent after examining the statements as filed with the Judicial Conference of the State of New York, by deponent, under his review, for all of pay-outs to deponent's clients as documented in the closing statement as filed with the Judicial Conferrnce.

11. To do otherwise by respondent's attorney is to take an undue advantage of Petitioners.

WHEREFORE, in view of all of the above it is most respectfully urged upon-the Court to vacate the stipulation of settlement executed July 7th,1976, and to set this case down fortrial for completion at once or in the alternative to credit the Petitioners the sum of $44,099.26 out of the unexplained deposits and thus giving the Petitione the credit said matter requires, and for such other and further and different relief as to this Court may seem just and proper in the premises for which no prior application has been made herein for the relief requested herein.

Sworn to before me this
12th day of July,1976.

/S/
FRANK L.SILVERMAN

ARTHUR B. SHEEHAN
Notary Public State of New York
No. 24-8954014
Qualified in Kings County
Commission Expires March 30, 197

SHEEHAN & COURTNEY
259 BROADWAY
NEW YORK 7, N. Y.

RE:FRANK L.SILVERMAN-Professional
Income for year 1960- Deposits
Regular account-Merchants Bank of N.Y.

Name of case:	Gross Receipts	Disbursements	Net
Grossman v Bartolo etal. . . .	$ 1096.00	61.00	$ 537.00
Prill v Goldberg,etal. . . .	800.00	24.00	376.00
Finkenthal v Rensview Holding	350.00	13.00	162.00
Friedland v 274 E.7th St.Corp.	500.00	24.00	226.00
Vargas v Hartwalt Realty Corp.	500.00	13.00	237.00
Sigmund v Klein	300.00	25.00	137.50
Haber v E.Arden etal. , , . .	200.00	12.00	88.00
Dallasto v Boryk	500.00	25.00	200.00
Bingham v Struth	250.00	25.00	100.00
Livanis v Vernon Cab Co.,Inc..	300.00	25.00	125.00
Campaign Contribution	250.00		
Refunds	341.00		
Piela v City of N.Y.	950.00	60.00	415.00
Serrano v Block	400.00	25.00	175.00
Finkenthal v Esport Realty Corp.	350.00	14.00	161.00
B.Nager v Dalsi,Inc.	500.00	25.00	225.00
Schackner v Dal$i,Inc.	1382.75 6/13/60	73.00	518.37
Masck v Metalviv	500.00	25.00	225.00
Propochuk v City of N.Y.	250.00	15.00	100.00
Two settled cases	1400.00	50.00	650.00
Kabrilis v Nerna Cab Co.,Inc. .	500.00	55.00	195.00
Friedland v Rensiew Holding Corp.	350.00	15.00	160.00
Savings account transfer(F.S.Bk)	200.00		
Gomez v Sabron Realty Corp. . .	350.00	17.00	158.00
Repayment of part mortgage . . .	364.38		
Bank Loan(Merchants Bank of N.Y)	2990.56		
Dividend Deposits	1420.35	Total-$ 621.00	
Total Deposits 1960	17294.54		Total.$5170.87

Savings account check	$ 1000.00
Exchnnged checks	603.90
Insurance Funds collected . .	844.00
Miscellaneos funds	585.00
Miscellaneous Ins.premiums . .	1189.75
Motors Ins.& Kuzman,etc. . . .	97,00
Gen.Fire & Liberty Ins.Co. . .	155.64
Total	4475.29
Carry forward above	17294.54
Sum Total in Regular account for the year 1960,Merchnts Bank of New York.	$21769.83

Special Account:

F.Savakina-refund of escrow	500.00
T.Cooperberg- " "	500.00
N.Abbaj " "	935.00
W.Jones " "	1150.00
H.Weiss " "	140.00
J.Venturella Ins.Refund	593.45
State Pay(F.L.S.)	490.12
Caire N.Y.Agency,Corp.	656.16
Refund Ins.Premiums	33.49
Hecker & Gitomer	130.64
N.Y.Assigned Risk&Marine.Ins.	125.48
xxxxxx Total	5064.34
Dividend	2444.10
Loan	2990.56
Sum Total Special Account deposited for year 1960.	$10499.00
N.Y.State pay(wages)	$8244.85

Exhibit 1-A

BEST COPY AVAILABLE

A-309

RE:FRANK L.SILVERMAN-Professional
Income for year 1961

Name ofcase	Gross Receipts	Disbursements	Net
Vaszlavik v Weiden etal . .	$500.00	$ 15.50	$ 242.50
Cuozzi v Esport Realty . .	325.00	25.00	150.00
Martellaro v 336 Associates .	350.00	82.99	11.52
Gomez v Sabron Realty Corp. .	350.00	26.00	152.00
Diller v 1280-A Sheridan Ass.	400.00	21.00	179.00
Trela v Kiely, Inc., at al. .	7500.00	601.00 .	
(See Closing Statement)		900.00 K & G.	1575.00
Skinner v N.Y.C.T.Authority .	150.00	20.00	55.00
Hadzinsky v Ave B & E'Bway .	12500.00	64.00	
(See Closing Statement)		1200.00 K & G.	1734.00
Bonet v Mets & Feinman . . .	1100.00	21.00	379.00
Kaufman v E.274th Street . .	450.00	27.00	198.00
Davidson v Feingold . . .	450.00	21.85	203.15
Gelbert v 182 Second Corp. .	450.00	10.00	215.00
Seeman v Sini Holding Corp..	500.00	17.00	233.00
Cohen v Atlas Baber School .	425.00	32.50	192.50
Mabracht v 1082-90 Easter Pk.	500.00	15.00	210.00
Blyan v Perlmax Realty Corp.	500.00	15.00	235.00
Finkenthal v Italia Society	1000.00	25.00	475.00
Klein v Dry Dock Savings Bank	225.00	17.00	92.00
Eisenstein v I.E.Holding Corp.	250.00	25.00	100.00
Bingham v Roman	685.00	46.50	295.00
Zucker v Celtic Service Corp.	250.00	10.00	111.00
Kornblau v Parade Dress Co.Inc.	300.00	50.00	100.00
Drelinger v M.Silverman etal.	1000.00	75.00	425.00
Friedland v Velan Operating Co.	400.00	10.00	190.00
Eng v Rubin Equities, Inc. .	2500.00	176.50	688.60
Total Receipt and deposits	$31060.00	$743.84	$8441.67
Regular Special Account 1961		Less	743.84
Merchants Bank of New York		Net. . .	$7697.83

Regular Account deposited:

Insurance premiums 1961-	$ 1110.80
Funds Exchanged-1961-	248.66
Tolstick v Hartford Ins.	600.00
E.Silverman-Life Ins.Col.	1000.00
Dividend deposits	1548.75
Checks exchanged	468.65
Professional Receipts . . .	1125.00
Total	$6101.86

Deposits in the regular account 1961 Merchants Bank of N.Y.

Respectfully submitted

Frank L. Silverman

FRANK L.SILVERMAN

Exhibit "A"

A-310

RE: FRANK L.SILVERMAN-Professional
Income for year 1962.

Name of case.	Gross Receipts	Disbursements	Net
Boruta v Medina	$ 500.00	$ 48.00	$ 202.00
Budawick v Rosenwasser	350.00	40.00	135.00
Bomser v Surface Transit	1250.00	21.00	417.34
Zeman v N.Y.C.Transit	500.00	10.00	240.00
Tirado v Nu-Land Associates,Inc.	3250.00	86.00	1387.50
Ramons v Rosenberg & Greensman	500.00	15.00	235.00
Adams v 274 E.7th Street,Corp.	300.00	13.00	137.00
Sochis v N.Y.C.T.Authority	500.00	28.00	228.00
Lasky v Scharf	375.00	20.00	167.50
Cuozzi v Weiss	375.00	26.00	161.50
Torres v Castillo	1500.00	85.00	665.00
Mostofsky v City of N	1500.00	128.50	648.60
Kalloa v McCary & Fri	1 6000.00	1373.85	3658.25
Cooperberg v Hockweis	325.00	25.00	113.12
Blyan v Pearlmax Real	400.00	12.50	187.50
Haber v Haber Realty Corp.	500.00	12.00	238.00
Total Gross Receipts Deposited in Merchants Bank	28125.00	1944.35	6819.31

Received Insurance Premiums	475.00
Made loan and deposited same.	1990.42
Exchanges(Re;Sorrell)	1000.00
Bank Transfer	900.00
Exchanges (Sorrell)	496.38
Escrow deposit(Sorrell)	500.00
Total	5361.80
N.Y.State Pay(wages)	10841.11
Grand Total	$16202.91

Recapitulation:

Total deposits Clients . .	$28,125.00
Miscellaneous deposits . .	16,202.91
Total deposits	$44,327. 91
Dividends deposited 1962.	3,303.00
All deposits	$47,630.91

Respectfully submitted
FRANK L.SILVERMAN
For year 1962.

RE: FRANK L.SILVERMAN-Professional
Income for year 1963

Name of Case	Gross Receipts	Disbursements	Net
Gold v Ventura .No.J.State..	$500.00	Charged undersigned	.228.5
Kayne v Wooten	$ 4000.00	$ 99.35	$1550.6
Saporita etal.v Dorishook . .	801.00	51.00	317.5
Grumet v City of N.Y.etal. .	1750.00	40.50	779.1
Matracht v Federation Ass.etal	450.00	30.00	220.0
Enculescu v Josen Realty Corp.	1800.00	55.00	820.0
Konetsky v Lowebthal	1000.00	25.00	475.0
Matracht v 1082-90 E.Pkway .	500.00	20.00	230.0
Birkenfeld v Klerfein etal. .	1250.00	10.00	590.0
Drelich v Lestz, etal	700.00	30.00	320.00
Friedland v Objzerwitz	287.00	36.00	125.00
Bass v Klein's on Square . . .	700.00	15.00	335.00
Seltzer v Esport Realty Co.,Inc	368.50	44.50	152.50
De Luca v 1280 Sheridan Avenue	1000.00	25.00	475.00
Castro v Reisfeld,etal. . .	3197.00	197.00	895.94
Katz v N.Y.C.T,Authority . .	150.00	14.00	62,00
Sanchez v Canter	750.00	39.00	336.00
Piela v The city of N.Y. . . .	900.00	47.00	403.00
Benley v Horn & Hardadt Co. .	500.00	35.00	215.00
Katz v N.Y.C.T.Authority . ..	200.00	19.00	61.00
Seeman v Kellner . No.J.STate.	200.00	Charged undersigned	
		" "	200.00
Total clients Receipts . . .	20003.50	831.85	8791.21

Less Gold case- $500.00
Less Seeman case 400.00
$900.00 * *

*($900.00)
Net . . . . $ 7891.21
Less Disbursements . . (831.85)
$7059.36

Insurance Premiums deposited	$ 1332.03
" " "	58.80
Exchanges(M.Schaeffer) "	290.60
N.Y.State Pay(wages) "	11643,83
Dividends deposited "	3953.50
Sales of stock	8012.50
Total	$25290.26
Received return of Capital	3500.00**

Recapitulation:

Deposit of clients funds .	$20,003.50
Miscellaneous deposits . .	25,290.26
Total deposits	$45,293.76
for year 1963,Merchants Bank	3,500.00 **
Sum total of all deposits.	$48,793.76

Respectfully submitted
FRANK L.SILVERMAN
Year 1963.

Exhibit ~~XA~~"C"

RE: FRANK L.SILVERMAN-Professional
Income for year 1964.

Name of Case	Gross Receipts	Disbursements	Net
Kogan v Mayland Properties	$150.00	$ 25.00	(50.00)
Prince v City of N.Y.	475.00	33.00	204.50
Kayne v Waxman	1500.00	36.52	563.48
Lvovsky v The City of N.Y.	500.00	50.00	150.00
Gambino v Solire Service Corp.	350.00	25.00	108.00
Drelinger v Roberta Service Co., Inc.	250.00	25.00	100.00
Richmand v N.Y.C.T.Authority	150.00	20.00	55.00
Turk v The Candy Rock, Inc., etal.	300.00	10.00	140.00
Siegel v 26 Willet St.Realty Co., Inc.	300.00	28.00	122.00
Wien v Ave.B & E.B'way Transit Co.	200.00	10.00	90.00
Total Clients deposits	$4175.00	$262.52	$1532.98

Case no record of are as follows:

Kogan v Kayland Properties	150.00
Cohen v Blue Rose Realty Corp.	200.00
Drelich v Public Service Coordinate	300.00
Bass v Lapidus	125.00
Bochner v Longo	350.00
Flax v N.Y.C.H.A. etal.	795.00
Total unaccounted cases	1920.00

N.Y.State Pay(wages)	$ 12602.87
Insurance Premiums clients	1699.23
Dividends deposited	4648.75
Interest deposited	133.93
Exchanged for cash(S.Sherman)	45.00
Sales of stock	2063.50
Total deposits	$21593.28

Recapitulation:

Clients funds deposited	$4175.00
Miscellaneous deposits	21593.28
Total Deposits Merchants Bank	$25768.28

Respectfully submitted

FRANK L.SILVERMAN
Year 1964.

Exibit ~~#1~~ "D"

A-313

RE: FRANK L.SILVERMAN-Professional
Income for year 1965

Name of case	Gross Receipts	Disbursements	Net
Rothenberg v Papavero et al.	$ 650.00	$ 31.85	$ 283.15
Aronson v Hermanco Hotel Corp.	No Judicial Statement of said case.		
Doyle v N.Y.C.T.Authroity	200.00	7.50	92.50
Crawford v Natrock Resturant, Inc.	225.00	13.00	99.50
Cuozzi v Weldon Realty Corp.	300.00	16.00	134.00
Maack v Wysoki	500.00	31.00	204.78
Attardi v Applebaum	225.00	10.00	98.75
Trela v City of N.Y.	350.00	31.00	154.00
Kayne v N.Y.C.Transit Authority	500.00	15.00	235.00
Maack v Waxman etal.	400.00	26.50	174.50
Venturella v A-Art Linnen Supply	150.00	12.00	63.00
Lucien v East Coast Transfer etal.	1000.00	41.00	459.00
Trela v Woronowitz et al.	4500.00	170.00	1000.00
Total Receipts of clients	$9000. 00	404.85	2998.18

Cases listed by agent no closing statement to account for said cases.

Kayme v Motor Vehicle A.I.Corp.	0	0	1020.00
Jerebet v Motor Vehicle A.I.Aorp	0	0	433.00
Caparino v Pina	0	0	125.00
Cohen v Hydie Realty Corp.& Barr	0	0	112.50
			1670.50

N.Y.State Pay(wages)	$13,715.01
Insurance premiums clients . . .	1,858.17
Dividendsdeposited	5,258.00
Interest savings accounts	142.04
Escrow deposited for refund	800.00
Loan Refund(Murray Sorrell)	1,000.00
Exchanged for checks	437.57
Sales of stock	51,196.22
Total deposits	$ 74,403.01**

Recapitulation:

Clients funds	$9000.00
Miscellaneous deposits	$74,403.01**
Total deposits	$83,403.01

Respectfully submitted

FRANK L.SILVERMAN
For year 1965.

Exhibit #1E"

BEST COPY AVAILABLE

Frank L. Silverman
Professional Income 1961

Name of Case	Gross Receipts	Additional Business Deductions	Net Professional Fees
Vuszlanik v. Wieder, Lipschitz + Weiss	257 50	15 -	
Cuozzi v. Esport Realty Co. Inc.	170 -	25 -	
Mortellaro v. 336 [illegible] Inc.	212 50	82 95	
Gomez v. Sabron Realty Corp.	198 -	26 -	
Diller v. 1280 A Sheridan Associates Inc.	200 -	21 -	
Trela v. Kirly Inc. + Suarez	3476 50	60 50	
Skinner v. NYC Transit Authority	75 -	20 -	
Hudzinsky v. Ave B + East Bway Transit	3000 -	64 -	
[illegible] v. Metz + Feierman	400 -	24 -	
Kaufman v. 274 E. 7th St. Corp.	225 -	27 -	
Davidson v. Feingold	225 -	21 85	
Gelbart v. 182-4 Second Corp.	225 -	10 -	
Cohen v. Atlas Barber School Inc	225 -	32 50	
Seeman v. Sinai Holding Corp.	250 -	10 -	
Matrecht v. 1080-90 Eastern Parkway Corp.	275 -	15 -	
Bylan v. Pearlmax Realty Corp.	250 -	15 -	
Finkenthal v. Italia Societa Per Azioni Di Navigazione	500 -	25 -	
Klein v. Dry Dock Savings Bank	112 50	17 -	
Eisenstein v. I. E. Holding Corp.	125 -	25 -	
[illegible]gham v. [illegible]	367 50	71 50	
Green v. Negra	175 -	20 -	
Zucker + Morris Button Co. Inc. v. Celtic Steamship Metz	121 -	10 -	
Kornblau v. Parade Dress Co. Inc.	100 -	2 -	
Dielinger v. Max Silverman D/B/A Academy Drum + Barrel Co. Kaplan	450 -	25 -	
Friedland v. Volan Operating Corp.	200 -	10 -	
Eng et al v. Rubin Equities Inc.	742 50	113 -	
Wylan v. Schulman + Green	688 60	146 10	
	$ 13301 60	$ 1475 44	11826.16

DKT NO. 3506-68
EXH. 19-S

Frank L. Silverman
Professional Income 1982

Name of Case	Gross Receipts	Additional Business Deductions	Net Professional Fees
Boruta v. Medina	✓ 250	✓ 48 -	
Budawick v. Rosenwasser	215 -	80 -	
Bomsert + Biss v. Surface Transit Inc.	558 34	20 -	
Zemaj v. NYC Transit Authority	300 -	7 -	
Tirado v. N. Land Associates Inc.	1877 26	479 76	
Ramos v. Rosenberg + Greissman	250 -	15 -	
Adams v. 274 E. 7th St. Corp.	150 -	13 -	
Sochis v. NYC Transit Authority	250 -	22 -	
Lusky v. Scharf	187 50	31 -	
Cuozzi v. Weiss	187 50	26 -	
Torres v. Castillo	250 -	85 -	
Mostofsky v. City of NY, Con Edison + Sicilian Asphalt Co.	777 10	128 50	
Kallao v. McCray + Fritchley	5032 10	1373 85	
Cooperberg v. Hockweiss + Hock Realty Corp.	156 87	73 75	
Blyan v. Pearlman Realty Corp.	200 -	12 50	
Haber v. Haber Realty Corp.	250 -	12 -	
	✓ 11 421 67	✓ 2 417 36	9 004 31

3/6

Frank I. Silverman
Professional Income - 1963

Name of Case	Gross Receipts	Additional Business Deductions	Net Professional Fees
Gold v. Ventura	$ 228.50	$ 74.00	
Kayne v. Werten	1772.38	122.38	
Saporito + Curcio v. Dorisbook, DeVito + Palmeri	426 -	60 -	
Grunet v. City of New York + A+C Holding Corp.	970.87	191.75	
Matracht v. Federation Associates + George Breslaw Inc.	240 -	30 -	
Enculescu v. Josen Realty Corp.	875.60	55.60	
Konetsky v. Lowenthal	500 -	25 -	
Matracht v. 1082-90 Eastern Parkway Corp.	250 -	20 -	
Birkenfeld v. Klepfer et. al.	600 -	10 -	
Drelich v. Lestz, Mandel, + Moskowitz D/B/A Ame 5000 Oil Co.	350 -	30 -	
Friedland v. Ojzerowitz	161 -	36 -	
Bass v. Kleins on The Square Inc.	350 -	15 -	
Seltzer v. Esport Realty Co. Inc.	206 -	54.50	
DeLuca v. 1280 Sheridan Ave. Assoc. Inc.	500 -	25 -	
Castro v. Reisfeld + Iturbe	1594.40	708.96	
Katz v. NYC Transit Authority	75 -	14 -	
Benelly v. Horn + Hardart Co.	250 -	35 -	
Katz v. NYC Transit Authority	100 -	19 -	
Sanchez v. Carter	436 -	100 -	
Piela v. The City of N.Y. + Einhorn	450 -	47 -	
Seeman v. Kellner	200 -	- 0 -	
	$ 10,535.75	$ 1,673.19	$ 8,862.56

Frank L. Schlorman
Professional Income 1964

Name of Case	Gross Receipts	Additional Business Deductions	Net Professional Fee
Kogan v. Kayland Properties Inc.	75 -	27 -	
Prince v. City of N.Y.	304 24	99 74	
Kayne v. Watman	600 -	36 52	
Lvovsky v. The City of N.Y.	300 -	200 -	
Gambino v. Sotire Service Corp.	133 33	25 -	
Drelinger v. Roberta Service Co. Inc., Hilpert + Brandt	125 -	25 -	
Richman v. NYC Transit Authority	75 -	20 -	
Turk v. The Candy Rock Inc. + Astor Plant Inc.	150 -	10 -	
Cohen v. Blue Rose Realty Corp.	200 -	18 -	
Orlich v. Public Service Coordinated Transport	300 -	15 -	
Bass v. Lapidus + Rivera	125 -	10 -	
Bochner v. Longo	350 -	19 -	
Flax v. NYCHA + Fast + Fast d/b/a A.F. Fast Co.	795 -	25 -	
	$ 3,532 57	$ 600 26	$ 2,932 31

A-318

Frantz L. Silverman
Professional Income 1965

Name of Case	Gross Receipts	Additional Business Deductions	
Rothenber v. Papavero + Metropolitan Auto Livery Service Co.	$ 410 70	$ 117 00	
Aronson v. Hermanco Hotel Corp. + 23 East [illegible] St. Corp.	112 50	10 -	
Crawford v. Nutrock Restaurant Inc.	112 50	13 -	
Doyle v. NYC Transit Authority	100 -	7 50	
Cuozzi v. Weldon Realty Corp.	150 -	16 -	
March v. Wysok.	295 22	90 4.	
Attardi v. Applebaum	116 25	17 50	
Trela v. City of New York	195 -	51 -	
Kayne v. NYC Transit Authority	210 -	15 -	
Venturella v. Art Linen Supply Corp. + Wilson	105 -	12 -	
Maack v. Waxman + Scheany et al.	200 -	26 50	
Lucien v. East Coast Transp. Co. + Bronstein	500 -	41 -	
Kayne v. Motor Vehicle Accident Indemnification Corp.	1130 -	91 50	
Jacober v. Motor " " " "	433 -	91 50	
Caparino v. Pina	125 -	12 -	
Cohen v. Hydie Realty Corp. + Burr	112 50	10 -	
	$ 4307 67	$ 622 50	$ 3685 17

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

FRANK L. SILVERMAN, ET AL
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 3506-68
9003-72
9004-72

ORDER

Upon consideration of the document and attachments received from petitionor Frank L. Silverman on July 14, 1976, which said document and attachments have been filed in each of these cases as of the date received as petitioners' motion to vacate stipulated decision, it is

ORDERED that the aforesaid motion to vacate stipulated decision filed in each of these cases on July 14, 1976 is hereby denied.

The stipulated decision entered in each of these cases on July 12, 1976 remains in full force and effect as of its entry date.

(Signed) William H. Quealy

Judge

Dated: Washington, D.C.
July 15, 1976

U.S. GOVERNMENT PRINTING OFFICE 1976 - 200-255

Form 50
Rev. Apr. 1970

NOTICE OF APPEAL TO COURT OF APPEALS

UNITED STATES TAX COURT
WASHINGTON, D.C.

FRANK L.SILVERMAN,
Petitioner,
-against-
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No.3506-68
Docket No.9003-72

FRANK L.SILVERMAN and ANNA SILVERMAN,
Petitioners,
-against-
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.9004-72

NOTICE OF APPEAL

Notice is hereby given that the Petitioners, FRANK L.SILVERMAN and ANNA SILVERMAN, individually and collectively hereby appeal to the UNITED STATES COURT OF APPEALS for the Second Circuit from each and every part of the decision of this Court as well as from the whole thereof entered in the above captioned proceedings under Docket Nos.3506-68, 9003-72 and 9004-72, on the 15th day of July, 1976, relating to FRANK L. SILVERMAN and ANNA SILVERMAN, as well as the denial of the Petitioners' application made to this Court, dated July 12, 1976, as well as from the whole thereof.

Frank L. Silverman
FRANK L. SILVERMAN-Pro Se
and Attorney for Petitioner
ANNA SILVERMAN
Office & P.O.Address
258 Broadway, New York, N.Y.10007
(212) 267-2760

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

FRANK L. SILVERMAN, et al Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Docket No. 3506-68 9003-72 9004-72

ORDER

On July 26, 1976, a Notice of Appeal was filed in these cases. In assembling the record for transmission to the Court of Appeals for the Second Circuit, it was determined that the following original documents had been inadvertently misplaced:

(1) The Minute Sheet pertaining to the proceedings at New York, New York, on June 14, 1976;

(2) The Court's Order dated June 30, 1976;

(3) The Minute Sheet pertaining to the proceedings at New York, New York, on July 7, 1976; and

(4) The Decision entered in each of these cases on July 12, 1976.

A copy of each aforesaid Minute Sheet was in the Court's correspondence file and counsel for respondent provided the Court with a copy of the aforesaid Order and Decision documents. For cause, it is

ORDERED that the Clerk of the Court is hereby directed to place the copies of the aforesaid minute sheets, the Court's Order of June 30, 1976, and the Decision entered in each case in the Court's official file in substitution of the originals thereof and each said document shall be deemed to be and shall constitute the original document.

(Signed) Howard A. Dawson, Jr.

Chief Judge

Dated: Washington, D.C.
August 23, 1976

U.S. GOVERNMENT PRINTING OFFICE 1976 - 200-255

Form 56
Rev. Apr. 1970

SILVERMAN & SILVERMAN
ATTORNEYS AT LAW
258 BROADWAY
NEW YORK, N.Y. 10007
267-2760

August 26,1976.

United States Tax Court
Washington, D.C.20217

Re: F.L.Silverman etal v Commissioner I.R.
Docket Nos. 3506-68
9003-72
9004-72

Att.Hon.Howard A.Dawson,Jr.
Chief Judge.

Dear Sirs:

The undersigned on behalf of the above named Petitioners bearing the above docket numbers, respectfully object to the inclusion of copies of the following documents that are not the originals:

(1) "The Minute Sheet pertaining to the proceedings at New York,New York,on June 14,1976;

(2) The Court's Order dated June 30,1976;

(3) The Minute~~x~~ Sheet pertaining to the proceedings at New York,New York,on July 7,1976; and

(4) The Decision entered in each of these cases on July 12,1976."

That the said order was made by this Court without due process and without notice of its entry, to the above Petitioners in this matter.

Respectfully submitted

FRANK L.SILVERMAN-Pro Se
Attorney for Petitioners
Office & P.O.Address
258 Broadway
New York,N.Y.10007

BEST COPY AVAILABLE

UNITED STATES TAX COURT
WASHINGTON

CLERK OF THE COURT

August 30, 1976

Frank L. Silverman, Esq.
258 Broadway
New York, New York 10007

In re: Frank L. Silverman, et al
Docket Nos. 3506-68, 9003-72, and 9004-72

Dear Mr. Silverman:

This is in response to your letter to Chief Judge Dawson which was received today and referred to this office for answer.

The Court, in preparing these cases for transmission to the Court of Appeals for the Second Circuit, pursuant to your Notice of Appeal filed in each case, discovered that it did not have the originals of the documents set forth in your letter and, consequently, in its discretion, it obtained copies thereof which were, by Order, deemed to be substituted for the originals and placed in the record.

Since the record in these cases was mailed to the U. S. Court of Appeals for the Second Circuit on August 25, 1976, any objection which you have as to not having been afforded due process with respect to the aforementioned substitutions should be addressed to the Court of Appeals for the Second Circuit.

Very truly yours,

Francis J. Cantrel

Francis J. Cantrel
Assistant Clerk of the Court

FJC/gar

H-324

Fr. R.L. Silverman
SUMMARY OF CLOSING STATEMENTS FILED WITH
JUDICIAL CONFERENCE

3-2

Exhibit No.	Name of Client	Date Filed	(#7) Gross Amt of Recovery	(#9) Net Amount to Client	(#9) Compensation to Undersigned	Exhibits	(#8) Name of Carrier (#3)	Gross Income Gross Income (Insurance amount of attorney not including client)	Total Expenses	Location of Deposit
16	VASZLAVIK	1/20/61	✓ 500	22750	✓ 24350	F.L. [illegible]	Greater New York Mutual Ins Co	25750	✓ 15	CASE # 48094
17	CUOZZI	1/20/61	✓ 325	✓ 150-	✓ 150		Consolidated Mutual Ins Co	✓ 175	✓ 25	Merchants Regular
18	MORTELLARO	1/26/61	✓ 350	✓ 22049	✓ 21250		Seymour Detsky Esq.	✓ 21250	✓ 8299	Merchants Special
19	GOMEZ	2/14/61	✓ 350	✓ 152	✓ 152-		Sebron Realty Corp	✓ 198	✓ 26- 26	
20	DILLER	3/1/61	✓ 400	✓ 200	✓ 179		Irving Segal Esq.	✓ 200	✓ 21	Merchants Special
21	TRELA	3/3/61	✓ 7500	✓ 402350	✓ 1975		Cutler, Cary, Schillig 3d Esqs	✓ 347650	✓ 60150	* CASE # 6509-
22	SKINNER	3/22/61	✓ 150	✓ 75	✓ 55		New York City Transit Auth.	✓ 75	✓ 20	
23	HADZINSKY	3/29/61	✓ 12500	✓ 9500-	✓ 3000		Ave. B. + East B'way Transit Co. Inc.	✓ 3000	✓ 64	Case 3000 # [illegible]
24	BONET	3/30/61	✓ 1100	✓ 700	✓ *400		Greater N.Y. M. Ins Co.	✓ 400	✓ 24	Merchants Special
25	KAUFMAN	4/7/61	✓ 450	✓ 225	✓ 198		Greater N.Y. M. Ins Co.	✓ 225	✓ 27	Merchants Special
26	DAVIDSON	4/7/61	✓ 450	✓ 225	✓ 20315		Manhattan Casualty Ins Co	✓ 225	✓ 2185	Merchants Special
27	GILBERT	4/12/61	✓ 450	✓ 225	✓ 215		Greater N.Y. M. Ins Co.	✓ 225	✓ 10	Merchants Special
28	COHEN	5/1/61	✓ 425	✓ 200	✓ 19250		Toplis + Harding Inc.	✓ 225	✓ 3250	Merchants Special
29	SEEMAN	5/1/61	✓ 500	✓ 250	✓ 233		Irving Segal Esq	✓ 250	✓ 10-	Merchants Regular
30	MATRACHT	6/13/61	✓ 500	✓ 225	✓ 210		Greater N.Y. M. Ins Co	✓ 275	✓ 15-	Merchants Special
31	BRYAN	6/13/61	✓ 500	✓ 250	✓ 235		Greater N.Y. M. Ins Co	✓ 250	✓ 15-	Merchants Special
32	FINKESTHAL	7/26/61	✓ 1000	✓ 500	✓ 475		Italian Line	✓ 500	✓ 25-	Merchants Special
33	KLEIN	9/25/61	✓ 225	✓ 11250	✓ 9550		Globe Royal Ins Co	✓ 11250	✓ 17-	Merchants Special
34	~~E~~ EISENSTEIN	9/25/61	✓ 250	✓ 125	✓ 100		Consolidated Mutual Ins Co.	✓ 125	✓ 25-	Merchants Special
35	BINGHAM	10/20/61	✓ 685	✓ 31750	✓ 29550		—	✓ 36750	✓ 7150	
36	GREEN	10/20/61	✓ 350	✓ 175	✓ 155		Martin P. Crean	✓ 175	✓ 20-	
37	ZUCKER + HIRSCH BUTTON CO	11/1/61	✓ 250	✓ 129	✓ 111		John C. McCarthy Esq	✓ 121	✓ 10-	Merchants Special #331
38	KOLNBLAU	12/2/61	✓ 300	✓ 150	✓ 50 ✓ 100	[illegible]	Zurich Ins Co.	✓ 100	✓ 2-	Merchants Regular

EXT. NO. 3506-68
EXH. 20-T

FRANK C. SILVERMAN

Summary 7 Closing Statements Filed With Judicial Conference.

Exhibit No.	Name of Client	Date Filed	(#7) Gross Recovery	(#9) Net Amount to Client	(#9) Consideration to Undersigned	Under	Issued	(#8) Name of Carrier	Gross Income: Gross Income (Show amount of Recovery and not amount to client)	Total Expenses	Location of Deposit
39	DEDLINGER	12/11/61	✓ 1000	✓ 550	✓ 475	Frank	[illegible]	Bernard Welch Esq	✓ 450	✓ 25 -	Chase Manhattan
40	FRIEDLAND	12/15/61	✓ 400	✓ 200	✓ 190	"		Greater N.Y. Indemnity Co	✓ 200	✓ 10 -	Merchant Special
41	ENG	12/18/61	✓ 2500	✓ 170250	✓ 67450	"		[illegible]	✓ 79250	✓ 133 -	[illegible]
42	NYLIN	12/18/61	✓ 1250	✓ 56140	✓ 150 ✓ 39250	Stanley's Frank	[illegible]	Irving Siegel Esq	✓ 65860	✓ 14610 *	Merchants
	TOTAL FOR 1961								1330160	~~140255~~ 1425.48	
43	BORITA	1/8/62	✓ 500	✓ 250	✓ 202	Frank	[illegible]	Aetna Ins Co.	✓ 250	✓ 48 -	Merchants
44	BUDNWICK *	2/28/62	✓ 350	✓ 135 -	✓ 135	"		Emanuel Morgenbesser Esq	✓ 215	✓ 80 -	
45	[redacted] BASS *	3/5/62	✓ 1250	✓ 64166	✓ 41734	"		Surface Transit Inc	✓ 55834	✓ 30 - ~~21~~	
46	MARTIN ZEMAN + THERESA ZEMAN	3/6/62	✓ 500	✓ 200	✓ 240	"		N.Y.C. Trans. Auth.	✓ 300	7 - ~~60~~ -	Chase Manhattan
47	TIRADO	4/2/62	✓ 3250	137324	138750	"		Cosmopolitan Mutual Ins Co	✓ 187326	✓ 47976	Merchants Special
48	RAMOS	4/5/62	✓ 500	✓ 250	235	"		Greater N.Y. Ind. Co.	✓ 250	✓ 15 -	Merchants Special
49	ADAMS	4/19/62	✓ 300	✓ 150	137	"		" " " "	✓ 150	✓ 13 -	Merchants Special
50	SOCHIS	4/26/62	✓ 500	✓ 250	228	"		N.Y.C. Trans Auth.	✓ 250	✓ 22 -	Merchants Special
51	LASKY	7/10/62	✓ 375	✓ 18750	167	"		—	✓ 18750	✓ 21	Merchants Special
52	CUIZZI	7/26/62	✓ 375	✓ 18750	16150	"		—	✓ 18750	✓ 26	Merchants Special
53	TORRES	8/24/62	✓ 1500	✓ 750	665			State Farm Ins	✓ 750	✓ 85	Merchants Special
54	MOSTOFSKY	9/4/62	✓ 1500	✓ 72290	64860			The City of N.Y.	✓ 77710	✓ 12850	[illegible]
55	KALLAO	9/2/62	✓ 16000	✓ 1096790	365825			U.S.F. + G Co.	✓ 503810	✓ 137385	Merchant Special
56	COOPERBERG	10/3/62	✓ 325	✓ 13813	11312			—	✓ 18687	✓ 7375	Chase Manhattan
57	BLYAN	11/26/62	✓ 400	✓ 200	18750			Greater N.Y. Ind. Ins Co.	✓ 200	✓ 1250	Merchants Special
58	HABER	12/14/62	✓ 500	✓ 250	238			—	✓ 750	✓ 12 -	Merchants Special
	TOTAL FOR 1962								1143167	~~247736~~ 2417.36	

* 150 was paid to Stanley Schlesinger and reflected in a W-2 form [illegible] which was filed with the return

In re [illegible] L. Silverman
Summary of Closing Statements Filed With Judicial Conference.

EXHIBIT NO.	CLIENT	DATE FILED	(#7) GROSS RECOVERY	(#8) NET AMOUNT TO CLIENT	(#9) COMPENSATION TO UNDERSIGNED	UNDERSIGNED	(#8) NAME OF CARRIER	Gross Income (Gross receipt from amount of Recovery less amount to Client)	Total Expenses		Location of Deposit
59	GOLD	1/17/63	✓ 365.50	✓ 137.–	137	Frank L.	[illegible] Esq.	✓ 228.50	✓ 74.00		Merchants Reg.
60	KAYNE	1/17/63	✓ 4000	✓ 2227.62	1650	"	J. Donald Hargens Esq.	✓ 1772.38	✓ 122.38		Merchants Special
61	SAPORITO	2/4/63	✓ 801	✓ 375	317.50	"	—	✓ 426	✓ 60.–		
62	CRUMIT	3/4/63	✓ 1750	✓ 779.13	779.12	"	[illegible] American Casualty Co.	✓ 970.87	✓ 191.75		Merchants Special
63	MATRACHT	3/25/63	✓ 450	✓ 210	190	"	Hanover Mutual Ins Co + Greater N.Y. In Ins Co	✓ 240.	✓ 30		Merchants Reg.
64	ENCULESCU	4/22/63	✓ 1800	✓ 924.40	820	"	Irving Segal Esq	✓ 875.60	✓ 55.60		Merchants Special
65	KOMETSKY	4/22/63	✓ 1000	✓ 500	475	"	—	✓ ~~500~~ 500	✓ 25.–		Merchants Special
66	MATRACHT	4/29/63	✓ 500	✓ 250	230	"	Irving Segal Esq	✓ 250	✓ 20		Merchants Special
67	BIRKENFELD	4/29/63	✓ 1250	✓ 650	590	"	Greater N.Y. In Ins Co	✓ 600	✓ 10		Merchants Special
68	DEELICH	5/29/63	✓ 700	✓ 350	320	"	General Mutual Ins Co. + Greater N.Y. Mutual Ins Co.	✓ 350	✓ 30		Merchants Reg. 350 Spec. 350
69	FRIEDLAND	6/5/63	✓ 286 ~~287~~	✓ 125	125	"	Cosmopolitan Mutual Ins Co	✓ ~~161~~ ~~162~~	✓ 36		Merchants Special
70	BASS	6/17/63	✓ 700	✓ 350	335	"	Consolidated Mutual Ins Co.	✓ 350	✓ 15		Merchants Special
71	SELTZER	6/13/63	✓ 368.50	✓ 162.50	151.50	"	Cosmopolitan Mutual Ins Co	✓ 206	✓ 54.50		Merchants Special
72	DELUCA	9/11/63	✓ 1000	✓ 500	475	"	Greater N.Y. In Ins Co	✓ 500	✓ 25.–		Merchants Special
73	CASTRO	9/30/63	✓ 3197	✓ 1602.60	433.46 [illegible] 964.94 Frank L. [illegible]		All State Ins Co + Pacific Ins Co.	✓ 1594.40	✓ 705.94	453.46 177.00 78.50 708.96	Merchants Special
74	KATZ	10/8/63	✓ 150	✓ 75	62	"	—	✓ 75	✓ 14		Merchants Regular
75	BENELY	11/1/63	✓ 500	✓ 250	215	"	J. B. Smith Esq.	✓ 250	✓ 35–		Merchants Special
76	KATZ	11/?/63	✓ 200	✓ 100	81	"	[illegible]	✓ 100	✓ 19		Merchants Reg.
77	SANCHEZ	12/16/63	✓ 750	✓ 314	336	"	Irving Segal Esq	✓ 436	✓ 100		Merchants Special
78	FIELN	12/18/63	✓ 900	✓ 450	403	"	The City of N.Y.	✓ 450	✓ 47		Merchants Special
79	SEEMAN	12/9/63	✓ 450	✓ 250	200	"	Public Service Mutual Ins Co.	✓ 200	✓ -0-		
	TOTAL FOR 1963							10536.75	1477.19		

Frank L. Silverman

Summary of Closing Statements Filed With Judicial Conference

Exhibit No	Client	Date Filed	(#7) Gross Recovery	(#9) Net Amount to Client	(#9) Compensation to Undersigned	Undersigned	(#8) Name of Carrier	Gross Income (Miscellaneous Gross Amount of Recovery less Net Amount to Client)	Total Expenses	
80	Kogan	1/23/64	✓ 150	✓ 75	48	Frank L. Silverman	Katz Esq	✓ 75	✓ 27	[illegible]
81	Prince	1/23/64	✓ 475	✓ 17076	20450	"	City of N.Y.	✓ 30424	✓ 9974	[illegible]
82	Kayne	1/27/64	✓ 1500	✓ 900	56348	"	Hartford Acc. Co.	✓ 600	✓ 3652	[illegible]
83	Kovsky	2/26/64	✓ 500	✓ 200	150 50	" Meyer Marcher	City of N.Y.	✓ 300	✓ 200	[illegible]
84	Gambino	3/5/64	✓ 350	✓ 21667	108	Frank L. Silverman	—	✓ 13333	✓ 25	
85	Drelinger	3/19/64	✓ 250	✓ 125	100	"	Empire Mutual Ins. Co. Ins. Co.	✓ 125	✓ 25	S.L.O.S.
86	Richman	6/4/64	✓ 150	✓ 75	55	"	N.Y.C. Transit Auth.	✓ 75	✓ 20	[illegible]
87	Turk	12/29/64	✓ 300	✓ 150	140	"	Empire Mutual Ins. Co	✓ 150	✓ 10	Merchant [illegible]
88	Cohen	7/7/64	✓ 400	✓ 200	182	Silverman + Silverman	Emanuel Morgenbesser Esq	✓ 200	✓ 18	Merchant S.L.O.S.
89	Drelich	7/27/64	✓ 600	✓ 300	285	"	Public Service Coordinated Transport Co	✓ 300	✓ 15	Merchant S.L.O.S.
90	Bass	8/25/64	✓ 250	✓ 125	115	"	U.S.C + G. Co	✓ 125	✓ 10	Merchant S.L.O.S.
91	Buchner	11/19/64	✓ 700	✓ 350	331	"	Aetna Casualty & Surety Co.	✓ 350	✓ 19	Merchant S.L.O.S.
92	Flax	11/23/64	✓ 1500	✓ 705	700	"	[illegible] N.Y. Motor Co.	✓ 795	✓ 95	Merchant S.L.O.S.
								353257	60026	

Total For 1964

L. Silverman
of Closing Statements Filed with Judicial Conference.

Exhibit No.	Client	Date Filed	(#7) Gross Recovery	(#9) Net Amount to Client	(#9) Compensation to [illegible]	(#5) Name of Carrier	Gross Income Insurance ([illegible])	Total Expense	Location of deposit
93	ROTHENBER	1/18/65	✓ 650	✓ 23930	28315	General Accident Group	✓ 41070	✓ 11755	Merchants - S.L. - Silverman
94	ARONSON	1/8/65	✓ 225	✓ 11250	10250	Security Mutual Ins Co	✓ 11250	✓ 10-	Merchants Special
95	CRAWFORD	1/25/65	✓ 225	✓ 11250	9950	—	✓ 11250	✓ 13-	Merchants - Special
96	DOYLE	2/9/65	✓ 200	✓ 100	9250	N.Y.C. Trans Auth	✓ 100	✓ 750	Merchants Special
97	CUOZZI	2/15/65	✓ 300	✓ 150	134	—	✓ 150	✓ 16	Merchants - Special
98	MAACK	2/24/65	✓ 500	✓ 20478	20477	Cosmopolitan Mutual Ins Co	✓ 29522	✓ 9045	Merchants Special
99	ATTARDI	2/25/65	✓ 225	✓ 10875	9875	Irwin Applebaum by Drug Cosmetic + Beauty Trade	✓ 11625	✓ 1750	First Natl City
100	TROLA	3/1/65	✓ 350	✓ 155	134	City of N.Y.	✓ 195	✓ 51-	
101	KAYNE	4/2/65	✓ 500	✓ 250	235	N.Y.C. Trans Auth	✓ 250	✓ 15-	
102	VENTURELLA	6/24/65	✓ 150	✓ 75	63	Empire Mutual Ins Co	✓ 75	✓ 12	Merchants Special
103	MAACK	6/28/65	✓ 400	✓ 200	17450	—	✓ 200	✓ 2650	Merchants S.L. - S.L.
104	LUCIANI	10/26/65	✓ 1,000	✓ 500	459	Raymond H. Branda Esq	✓ 500	✓ 41-	Merchants - Special
105	KAYNE	3/19/65	✓ 2,16276	✓ 104276	92850	Motor Vehicle Accident Indemnity Corp.	✓ 1120	✓ 9150	Merchants - S.L. - Silverman
106	JEREBKER	3/25/65	✓ 816	✓ 383	34150	"	✓ 433	✓ 9150	Merchants - S.L. - Silverman
107	CAFARINO	6/17/65	✓ 250	✓ 125	113	Empire Mutual Ins Co	✓ 125	✓ 12-	Merchants - S.L. - Silverman
108	COHEN.	12/29/65	✓ 225	✓ 11250	10250	Cosmopolitan Mutual Ins Co.	✓ 11250	✓ 10-	Merchants - S.L. - Silverman
							4 430767	4 62250	

315

FRANK . SILVERMAN
BUSINESS EXPENSES
SCHEDULE C

A-325 21 325

	1961 Claimed	1961 Allowed	1961 Adjustment	1962 Claimed	1962 Allowed	1962 Adjustment	1963 Claimed	1963 Allowed	1963 Adjustment
Cost of Labor - Salary	5118.83	5118.83	—	1839.05	1839.05 ✓	—	2005 -	2005	—
Car expenses	3484.54	-0-	3484.54	2550.65	0	2530.65	2005.18	-0-	2005.18
Depreciation of Office Furniture	250 -	250 -	—	250 -	250	—	250	250 -	-0-
Rent	1200 -	1200 -	—	1200 -	1200 ✓	—	1500	1,500	-0-
Insurance	35	35 -	—	35 -	35 ✓	—	35 -	35 -	-0-
Postage	125 -	125	0	175 -	175 ✓	-0-	175 -	175	-0-
Tel. Answer. Service	114 -	114	—	150 -	183.75 ✓	(33.75)	141 -	141 -	-0-
Stationery & Printing	227.60	96.10	131.50	235.60	96.10 ✓	139.50	235	94.10	[illegible]
N.Y. Telephone	474.74	195.26	279.44	472.44	195.26 ✓	277.18	305.95	195.26	108.72
Elkins	241.78	—	241.78	272.70	—	272.70	—	—	—
Repairs	—	—	—	51.81	—	51.81	65	-0-	65
Photographs exhibits	—	—	—	94 -	94 - ✓	—	105 -	105 -	—
Steno Service	488 -	-0-	488	475 -	-0-	475	—	—	—
Hotel accommodations	—	—	—	200.15	-0-	200.15	75 -	-0-	75
Petty Cash	125	-0-	125	75 -	-0-	75	75 -	-0-	75
Entertainment	375 -	-0-	375	250 -	-0- ✓	250 -	350 -	-0-	350 -
Fuel Oil	—	—	—	134.91	-0-	134.91	—	—	—
Process Service	—	—	—	153.50	122.50 ✓	31	147 -	122.50	24.50
Magazines	—	—	—	—	—	—	125 -	-0-	125 -
	12259.47	7134.17 [illegible] 2013 [illegible]	5125.28 ✓	8537.81	4443.06 1839.05 2604.01	4134.75 ✓	7342.[illegible]1	4374.90 2005 - 2369.90	2967.31

NO. 3506-68
EXH. 21-4

FRANK L. SILVERMAN
BUSINESS EXPENSES
SCHEDULE C. 22

22

- 20 -

	1964 Claimed	1964 Allowed	1964 Adjustment	1965 Claimed	1965 Allowed	1965 Adjustment	1960 Claimed	1960 Allowed	1960 Adjustment
Cost of Labor - Salary	63210	63210	—	128417	128417	—	1904 -	1904 -	-0-
Car Expenses	167002	-0-	167002	234605	-0-	234605	191508	-0-	191508
Depreciation on Office Furniture	—	—	—	—	—	—	250 -	250 -	-0-
Rent	125014	125014	—	125004	125004	—	1200 -	1200 -	-0-
Lawyers Assoc.	35 -	35 -	—	50 -	50	—	135 -	135	-0-
Postage	175 -	175	-0-	150 -	150	-0-	Client Expense 218 -	218	-0-
Telephone Answering Serv.	143 -	143	—	15885	15885	—	114 -	114	-0-
Stationery & Printing	225 -	7610	14890	225 -	9610	12890	23551	9610	13941
[illegible] Telephone Co.	—	—	—	20747	20747	—	46677	19526	27151
[illegible]	—	—	—	—	—	—	10770	-0-	10770
Repairs	45 -	—	45	—	—	—	—	—	—
Photographs, Exhibits	3328	3328	—	—	—	—	—	—	—
Steno Service	—	—	—	20690	-0-	20690	56840	-0-	56840
Entertainment of Client	350 -	-0-	350 -	350 -	-0-	350 -	425 -	-0-	425 -
Petty Cash	75 -	-0-	75 -	75 -	-0-	75	125 -	-0-	125 -
Miscellaneous Exp.	125 -	-0-	125 -	75 -	-0-	75	[illegible] Transportation 88	-0-	88
Club Luncheon	125	-0-	125	175 -	-0-	175	—	—	—
Law Publications	125	-0-	125	—	—	—	—	—	—
Process Server	5150	5150	—	42 -	42	-0-	125	125	-0-
[illegible] Car	16724	-0-	16724	—	—	—	—	—	—
Referee Escrow Dues	—	—	—	50 -	50	—	—	—	—
Moving Expenses	—	—	—	75 -	—	75	—	—	—
*	507278	239612	263116 (5072.78 - 231[illegible])	677048	328863	348185	774926	403918	371008
		63210			128417				
		176402			200446				
				100		100			
				17260		17260			
				704308		375445			

* [illegible] 5022.78
(1) [illegible]
[illegible] 1250.14 + 1670.02 = [illegible] 2920.16

A-326 + A-331

U. S. TAX COURT
84
1976
Marked for Identification
Received in Evidence
Docket No.

	1961		1962		1963		1964		1965	
	Per Return	Corrected	Per Return	Corrected	Per Return	Corrected	Per Return	Corrected	Per Return	Corrected
ESSIONAL INCOME - GROSS RECEIPTS	813790	1330160	324635	1142167	321050	1053615	215794	[illegible]	297067	[illegible]
SCHEDULE C EXPENSES - PER RETURN	1225937	1225937	855481	855481	734221	734221	502725	[illegible]	704305	[illegible]
" - ADDITIONAL		140245		247136		167719		[illegible]		[illegible]
TOTAL EXPENSES	1225937	1366182	855481	1105617	734221	901940	502725	[illegible]	704305	[illegible]
NET PROFIT OR (LOSS)	(412147)	(36022)	(533342)	36550	(413171)	151735	(286934)	[illegible]	(416241)	[illegible]
PITAL GAINS	-0-	1221746	(37794)	184057	4768	5751	(40707)	[illegible]	(100000)	[illegible]
NTEREST INCOME	-0-	44470	-0-	24670	-0-	53371	13393	[illegible]	14204	61821
DIVIDEND INCOME	2000	679273	3353	703976	400350	736427	464575	[illegible]	5258	[illegible]
COMMISSION INCOME	-0-	25734	-0-	19979	-0-	25539	-0-	[illegible]	-0-	[illegible]
WAGES	972544	972544	1054111	1054111	1164383	1164383	1306237	[illegible]	1371501	[illegible]
TAL	660097	2907725	847715	2055338	1156330	2140537	1453601	[illegible]	1395273	[illegible]
LESS - DIVIDEND EXCLUSION	50	50	50	50	50	50	100	[illegible]	200	100
DJUSTED GROSS INCOME	655397	2902735	842775	2050335	1151330	2135537	1443601	[illegible]	1375273	3473763
SS - ITEMIZED DEDUCTIONS	102910	102910	125045	125045	144075	144075	158967	[illegible]	195545	[illegible]
EXEMPTIONS	120000	120000	120000	120000	120000	120000	120000	[illegible]	120000	[illegible]
TOTAL	222910	222910	245045	245045	264075	264075	278967	[illegible]	315945	[illegible]
ABLE INCOME	432447	2679815	594727	1803290	857255	1871462	1073427	[illegible]	1059328	3116015
X	87135	[illegible]	122840	[illegible]	190672	[illegible]	212363	[illegible]	195052	[illegible]
IVIDEND RECEIVED CREDIT	6500	26971	13212	37459	15802	24257	9094	16292	—	—
X	80335	[illegible]	109535	[illegible]	174870	[illegible]	203269	[illegible]	195052	[illegible]

A-327

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P. O. BOX 4100
NEW YORK, N. Y. 10015

August 4, 1967

IN REPLY REFER TO
ID:3:6:AMJ

Certified Mail
Return Receipt Requested

Mr. Frank L. Silverman
258 Broadway
New York, N.Y. 10007

Dear Mr. Silverman:

The current investigation by the Intelligence Division of your income tax liability for the years 1961 to 1965, inclusive, is nearing completion.

Developments of the investigation indicate that a substantial amount of your income is not reflected on your United States income tax returns. Consideration is being given to a possible recommendation that criminal proceedings be instituted against you for attempted evasion of your income taxes.

In the circumstances, it is deemed appropriate to grant you a formal interview, before final decision is made, at which time you may appear with counsel if you so desire or with any other person who may have knowledge of the facts in your case whom you wish to be present.

Accordingly, a formal interview has been set in this matter to be held at 10 A.M. on August 22, 1967 in 120 Church Street, New York, New York, 20th floor. Mr. Lloyd F. Flannery, Group Supervisor, will conduct the interview.

You may at that time present any facts or evidence which you wish to have considered in connection with this matter.

You are requested to inform this office promptly whether you intend to appear for the proposed formal interview. It is important that your reply, and any inquiries relating thereto, be addressed to District Director, Internal Revenue Service, Attention: Chief, Intelligence Division, P.O.Box 4100, New York, New York 10015.

Very truly yours,

A. W. Walters Jr.
A. W. Walters, Jr.
Chief, Intelligence Division

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Moore & Schley, Cameron & Co.

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March 4, 1976

Frank L. Silverman, Esq.
258 Broadway
New York, New York 10007

Dear Mr. Silverman:

The following information pertains to your request regarding the dividend status of Crescent Petroleum 5% Preferred through 1960:

Year	Amount Paid	Status
1960	$1.25	non-taxable
1961	$1.25	non-taxable
1962	$1.25	non-taxable
1963 -- 1968		all taxable

Crescent Petroleum merged into National Industries, Inc. on July 1, 1968.

Yours very truly,

Ken Koslow

Kenneth Koslow

KK:jos

px 71

Petitioners' Exhibit 71

TWO BROADWAY, NEW YORK, N.Y. 10004 / TELEPHONE (212) 483-1800 / CABLE "SCHLEY" NEW YORK / TELEX 12-7239

A-329

GIRARD BANK

Girard Plaza
Philadelphia PA 19101

Tel (215) 585-2000

February 18, 1976

Mr. Frank L. Silverman, Esq.
258 Broadway
New York NY

Dear Mr. Silverman:

Reference is made to the subpoena dated February 18, 1976 from the United States Tax Court in New York. This letter is to further clarify the information contained in our letter to you dated December 26, 1974. Our records as Transfer Agent for Atlas Credit Corporation, Common Stock and the successors, Sunasco, Inc. and Scientific Resources Corporation indicate that shares were first issued to you October 20, 1958 and following that date additional certificates were issued until the total reached 1,555 shares.

On May 4, 1966, these shares were surrendered to the Chase Manhattan Bank and exchanged for 478 shares of Sunasco Inc, Common Stock. On April 20, 1966, and additional 22 shares were issued bringing the total holdings to 500 shares. On September 27, 1968, you tendered your stock in exchange for Commonwealth United Corporation because of a Pro-Rata allication 236 shares of Sunasco were reissued to you. On March 27, 1970, an additional 64 shares were issued to you bringing the total to 300 shares. In May 1975, Scientific Resources Corporation distributed as a final liquidating payment 150 warrent shares of Rocky Mountain Industries.

During the period 1958 through 1976, our records indicate that none of your shares were transfered out of your name except as indicated above.

We hope this information will be helpful to you and that we will not be required to appear in person.

Sincerely,

Edward Mogee
Senior Corporate Trust Officer

EM:sl

pt
70

The Merchants Bank of New York 434 BROADWAY · NEW YORK, N. Y. 10013
TELEPHONE (212) 966-5500
BANKING SINCE 1881

RUTH JACOBSON
ASSISTANT SECRETARY

January 24, 1975

Silverman & Silverman
258 Broadway
New York, N.Y.

Att: Mr. Frank L. Silverman

Dear Mr. Silverman:

Please be advised that the check in the amount of $37,500.00 deposited by you on December 13, 1965 drawn on a Dallas Texas bank was not available for withdrawal until January 1, 1966.

Very truly yours,

Ruth Jacobson
Ruth Jacobson
Assistant Secretary

/rj

Pt 79

Petitioners' Exhibit 79

MEMBER OF · FEDERAL RESERVE SYSTEM · FEDERAL DEPOSIT INSURANCE CORPORATION

A-332

UNITED STATES TAX COURT

(Exh.A)

FRANK L. SILVERMAN
Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE
Respondent

DOCKET NO. 3506-68
9003-72
9004-72

(RECALL)

LOCATION OF HEARING: New York City, New York

DATE: December 12, 1973

BEFORE: Honorable Samuel B. Sterrett

APPEARANCES: Frank L. Silverman,
Petitioner

Michael A. Menillo,
Attorney for Respondent

PROCEEDINGS

Start of tape
New York, New York
12-12-73

THE CLERK: The Court is in session. Be seated. 3506-68, and related docket numbers, Frank L. Silverman and related Petitioners.

MR. MENILLO: Michael A. Menillo for respondent.

MR. SILVERMAN: Frank L. Silverman for Frank L. --

THE COURT: Gentlemen, I hope you spent a fruitful day or so?

MR. SILVERMAN: We did quite a few fruitful things -- that we tried to resolved, but it will take you a long time, Judge, until we're able to work out some plan where we come before the Court with some concrete proof. The way we have it now situated, we're not going to be able to pay all of this. It's so complicated -- so bewildered -- it's all mixed up, Judge -- not even funny. And my respondent would not force me without statement for the Court, I'm sure. He and I have worked on these things here. We're accomplished almost every day by telephone or personally at the office. And I'm going to respectfully ask this case be put over around April or May. By that time, I hope, and the respondent thinks, we may be able to resolve a lot of things, so we don't burdenthe Court so much.

THE COURT: How much time have you spent the last day -- did you spend yesterday, for example, with the Government --

MR. SILVERMAN: We were in contact with each other.

The agent couldn't be there.

THE COURT: Well, what does that mean, a telephone call? I mean, that doesn't --

MR. SILVERMAN: Well, the agent couldn't make it. The respondent wanted the agent present at the time, to be able to go over these figures and these items.

MR. MENILLO: Your Honor, we've gotten to the point where the best thing to do is if we can get an agent, and we'll all work together. Mr. Silverman doesn't want to work just with the agent. He wants to come into our office here. So -- the agent was available yesterday afternoon, but Mr. Silverman wasn't. I had about ten phone calls back and forth; and at this point, we have a conference set for Monday afternoon; and the agent will come in. We've got six years here with, you know, cancelled checks and all kinds of records that Mr. Silverman has come in with. So, I think the best thing to do is to get the agent to go over this once, instead of -- we're just dragging it on. But hopefully, we will be able to dispose of this. And we have accomplished something. We've accomplished more in the last week or two, than we've accomplished since 1968. It's nothing conclusive yet, but --

MR. SILVERMAN: I'm going to further request that this Court assist me and aid me in directing the respondent to give me whatever breakdown of deposits they could possibly secure from the agent of the Internal Revenue people, so I may be able to pinpoint most of those items, so that it will obviate the necessity of spending weeks, maybe months, in this matter; so we may be able to resolve it, once and for all and be through with it.

THE COURT: Well, I'm sure respondent -- is this a bank deposit case?

MR. MENILLO: Yes, Your Honor.

THE COURT: Well, I'm sure the respondent will tell you specifically what items of deposits have been included in your income. There isn't any problem about that, is there, Mr. Menillo?

MR. MENILLO: No, Your Honor. Your Honor, I think Mr. Silverman will agree that I've given him everything he's asked for. I mean, I'm not keeping anything back. If I have it, he's welcome to it. I've prepared schedules. We've amended our pleadings when he's requested additional information. Whatever we have -- we want to work with him and if he's, you know, entitled to certain deductions and certain unexplained deposits can be explained, we want to do that. We don't want to charge him with anything he shouldn't be charged with.

MR. SILVERMAN: Judge, at the same time, they lumped every bank account for every year, together. How can I specifically point out which is which, and what belongs to what? You realize, and I know you're aware of the fact that special accounts, trust accounts are very very complicated to identify, unless we have leads to it. Then we can identify these deposits. The escrow funds, the clients' monies, not mine. True, these accounts were substantial, but it wasn't my money. I pinpointed quite a few of them as I --

THE COURT. Well, if the Government is giving you the details with respect to each deposit, what more can they do?

MR. SILVERMAN: No, Your Honor. They gave me a lump sum for a year, for account. They haven't given me details.

THE COURT: Well, I thought you told me you had details of the deposits that you've included as income?

MR. SILVERMAN: A lump sum.

THE COURT: Wait a minute. Let me --

MR. MENILLO: Your Honor, we've listed all the various accounts and the deposits for the year -- if you want to call it lumping it together -- the total deposits for the year. Then we eliminated what has been identified as transfers from other accounts, or dividend income which has been charged elsewhere. In other words, we have the total deposits for the year in a certain account, and then we have eliminations.

THE COURT: Well, did you have a breakdown of the total deposits?

MR. MENILLO: You mean each specific deposit?

THE COURT: Yeah. I mean, $2,000 on March 21st, $1500 on April 2nd?

MR. MENILLO: Not all of them. We may have some of them, Your Honor. I told Mr. Silverman I'll check. He just requested that now. I said, if I have it, I'll give it to him. I know some that we --

THE COURT: You must've got the total, it seems to me. You must have had a breakdown of the total?

MR. MENILLO: Right. But, you see --

THE COURT: Otherwise, how did you get the total?

MR. MENILLO: Well see, originally, Your Honor, there were criminal cases, and the work papers have been back and forth, and what I have left, I don't have all of them.

THE COURT: It's an old case, isn't it? What years are involved?

MR. SILVERMAN: '60, '61, '62 to '65.

THE COURT: That's not so old by some standards. But -- well, give him the breakdown. He ought to -- you ought to give him a breakdown of the deposits. I think the man's entitled to it, so he can explain each particular deposit if he can.

MR. MENILLO: He has records of the deposits that we don't have. He had the -- well, the passbooks and the savings accounts -- if I have it, I will.

MR. SILVERMAN: Judge?

THE COURT: Mr. Silverman, all the Government can do -- and I'm directing the Government now to give you the total breakdown they have of the deposits. Now, after they've done that, that's all they can do.

MR. SILVERMAN: That's what I've been asking the Government.

THE COURT: I just directed Mr. Menillo to do so.

MR. SILVERMAN: I want a breakdown of each deposit for each year, each taxable year, so I can come into Court and intelligently tell the Court what's what, and what belongs to what.

THE COURT: I understand.

MR. SILVERMAN: Thank you very much, Judge.

THE COURT: Do you understand, Mr. Menillo? Is there any problem about it?

MR. MENILLO: No, Your Honor. But if I have them, I'll be happy to give them to him. I've told him that.

MR. SILVERMAN: Judge, there must have been some basis for getting these figures, so somebody must have them. And Mr. Menillo is in a position to get them. I can't get it from the --

THE COURT: Well, he's going to give you the breakdown. If he doesn't have the breakdown, then that perhaps is a problem to them. But, he's going to give you what he's got, so that's all he can do.

MR. SILVERMAN: I appreciate it, Your Honor. Thank you very much.

THE COURT: Very well.

243 MR. SILVERMAN: Would Your Honor be good enough to put it off around April?

THE COURT: Well, I'll continue the case generally with a request to the chief judge, to put it on a calendar in April. The case is continued on a motion of petitioner without objection by respondent.

MR. SILVERMAN: Thank you very much. I'll be notified?

THE COURT: Pardon me?

MR. SILVERMAN: I'll be notified of the next calendar date?

THE COURT: Oh, yes. We won't keep it a secret. I promise.

MR. SILVERMAN: Thank you very much.

MR. MENILLO: Thank you, Your Honor.

(Whereupon the case was adjourned as described above)

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68
9003-72
9004-72 Name: FRANK L. SILVERMAN

The foregoing pages, numbers 1 through 8 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Patricia Schlairet on December 12, 1973 in the United States Tax Court located in New York City, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

Joan Willman
(Name)

December 28, 1973
(Date)

UNITED STATES TAX COURT

"Exh"B"

FRANK L. SILVERMAN

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Docket No. 3506-68

LOCATION OF HEARING: UNITED STATES TAX COURT
WASHINGTON, D.C.

DATE: June 13, 1973

BEFORE: THE HONORABLE THEODORE TANNENWALD, JR.

APPEARANCES:

D. RONALD MORELLO
for the respondent

FRANK L. SILVERMAN
for the petitioner

PROCEEDINGS

THE CLERK: Docket number 3506-68, Frank L. Silverman.

MR. SILVERMAN: Further motion, Your Honor --

THE COURT: Pardon --

MR. SILVERMAN: This is a motion for a bill of particulars.

THE CLERK: State your appearance please.

MR. SILVERMAN: Frank L. Silverman, 258 Broadway, Manhattan.

MR. MORELLO: D. Ronald Morello for the respondent, Your Honor. This was heard two weeks ago --

THE COURT: What has happened to the spread sheet?

MR. MORELLO: As I understand it, Your Honor, there was no spread sheet, however, the respondent's counsel has sat down with Mr. Silverman, and supplied him with all the information that we have as to copies of bank records. I believe that we have been completely open on this, at least I am so advised.

MR. SILVERMAN: Your Honor, I have the records with me here, they give me no breakdown, they just make assertions and figures, and they don't tell me what is taxable, what isn't taxable -- just a minute please, and one bank account with $21,000.00, they give me nothing, they say they haven't got it. How did they get the $21,000.00 -- $4,000.46?

THE COURT: Have you gone to the bank and asked for record act copies of the bank accounts?

MR. SILVERMAN: The bank wouldn't know which items are taxable and which items are non-taxable.

THE COURT: But -- you can -- you can get the account, and you can do some arithmetic yourself?

MR. SILVERMAN: I could very well do it, but this is thirteen years old, Judge.

THE COURT: Have you asked the bank for record act of the transcript of the accounts?

MR. SILVERMAN: I tried, nothing was available to me, I tried several times.

THE COURT: What do you mean that you tried, did you ask them for record acts or didn't you?

MR. SILVERMAN: I asked them for copies of the statements, and they don't think that they have them anymore, this is thirteen years old.

THE COURT: Well, the respondent is representing to me that they have given you all that they have, and the burden of proof is on you.

MR. SILVERMAN: Well, they did not, Your Honor, they didn't give me the $21,000.00 bank statement.

THE COURT: I'm sorry, Mr. Silverman, you can then make whatever argument you want, you have gotten all that they got, and when --

MR. SILVERMAN: Well, they promised --

THE COURT: The case comes to trial, you can make whatever arguments you want about the fact that they -- if you think that they asserted a deficiency without reasonable cause, and were arbitrary, that is your privilege to assert it, but I can't make them give you what they don't have.

MR. SILVERMAN: Your Honor, I cannot come in to meet a burden, unless I know what's what.

THE COURT: Your problem is that you -- it is your problem, and you should have had the records, and you can't get out of that problem by unloading the -- upon the Court, the fact that the respondent doesn't give you something that he doesn't have. Now, I'm sorry, Mr. Silverman it is your problem, and the best thing that you can do, is to just get ready and go to trial. You have been putting this off long enough.

MR. SILVERMAN: No, Your Honor, I wasn't putting it off, I'm ready to go if they will give me the information to try it with, I --

THE COURT: The motion for the bill of particulars is denied.

MR. SILVERMAN: Your Honor, there is ample authority for that proposition --

THE COURT: The motion for the bill of particulars is denied.

MR. SILVERMAN: I respectfully except Your Honor's ruling.

THE COURT: You have your exception, and I suggest you go to trial.

MR. SILVERMAN: Thank you very much.

THE COURT: The case is an old case, and it should be set as promptly as possible for trial.

(Whereupon, the hearing in the above was continued as described above.)

A-346

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: Frank L. Silverman

The foregoing pages, numbers 1 through 5 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Gwen Thompson on June 13, 1973 in the United States Tax Court located in WASHINGTON, D.C. __________, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name) GAIL VALLEE

June 13, 1973
(Date)

UNITED STATES TAX COURT

"Exh.C "

FRANK L. SILVERMAN,
FRANK L. SILVERMAN, Petitioner
FRANK L. SILVERMAN AND ANNA SILVERMAN

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

DOCKET NO. 3506-68
9003-72
9004-72

(EXTRACT FROM CALENDAR CALL)

LOCATION OF HEARING: New York, New York

DATE: September 22, 1975

BEFORE: Honorable William H. Quealy

APPEARANCES: Frank L. Silverman,
Pro Se

PROCEEDINGS

THE CLERK: Docket number 3506-68, 9003-72 and 9004-72, Frank L. Silverman; and two other cases. Your appearances, please?

MR. SILVERMAN: Frank L. Silverman for petitioners.

THE COURT: Mr. Silverman, how many times have you been before this Court on this motion and similar ones?

1297 MR. SILVERMAN: I was -- under similar reasons. Your Honor, I was in Court several times for -- particulars. That was before --

THE COURT: Well, let me say, Mr. Silverman, that the Court is fully familiar with your position and familiar with your motions which you've filed previously in this case on several times. Your motion is again denied and if it were -- had been set properly, the Court would go ahead and enter a decision for the respondent just as the Court did in the Century case. But by reason of the fact that this was merely set on the motion and the manner in which the order was entered, the Court does feel constrained not to do so. However, this case is being set for trial at the calendar which commences here on December 1st; and it is the intention of the Court if you're not ready, willing and able to go to trial at that time, that a decision will be entered. This case has been pending since 1968. It's been on every calendar, I believe, that -- it's been up here in that period of time. This is a repetition of a motion that you have. The Government has cooperated with you. Mr. Menillo has been before the Court several times and explained the information he's given to you. Now, this is the end of the road, so I'm telling you now so that you can be prepared, this case will be tried December 1st. Your motion to -- for further discovery is hereby denied.

MR. SILVERMAN: May I be heard, Judge?

THE COURT: You may be heard now.

MR. SILVERMAN: Now, I served papers on Mr. Menillo April 30th. He didn't have the courtesy to serve a reply within the 45 days as required by --

THE COURT: Mr. Silverman, you've been serving papers in this case since, I think, 1968 or 1969. The files -- how many times has this case been up -- up here?

MR. SILVERMAN: Several times.

THE COURT: That's right. So, we've come to the end of the line.

MR. SILVERMAN: But, Judge --

THE COURT: You've had plenty of time. There are stipulation processes. I've read the transcripts of the prior hearings. You have been furnished with all the information that the Government has that should enable you to meet your burden in this case, if you can meet it. This is a bank deposit case, right?

MR. SILVERMAN: No, sir. Not totally.

THE COURT: Well --

MR. SILVERMAN: Judge, I'd like to call your attention to one fact. Asking a petitioner to come into Court and tell the Court a lump sum of $3,000.00 in one bank, a lump sum of $8,000.00 in another bank, and so on and so forth, without meeting the burden -- the burden on petitioner. I'd like to have a breakdown of these items, Judge. I'm entitled to it. That -- for that reason --

THE COURT: Respondent -- respondent will give you -- as I understand it, has given you whatever breakdown he has. If you -- if you run $100,000.00 in deposits through a bank, and you report $10,000.00 in gross income on your return, the respondent is entitled to ask you to explain the other ninety. He doesn't have to explain the other ninety. That's your burden. Now, that's the way the law's been interpreted as long as I've been in it, and that's been a long time. And you and I have had other cases here, and we've gone through this --

MR. SILVERMAN: Yes, Your Honor.

THE COURT: -- same thing before. And that's why I don't want to try your case, frankly, because I'd be the first to admit, I'd have a hard time being patient.

But, I'm setting it down for December 1st. Judge Hall will be up here, and I'm sure the lady will show great patience and dilligence in seeing that case is -- can be brought to trial. Thank you, Mr. Silverman.

MR. SILVERMAN: You mean the Court needs to infer to me at this point that the respondent doesn't have to answer any -- any answer --

THE COURT: None of the questions that he hasn't answered. As I read this record, the respondent has supplied you with all the information that's necessary.

MR. SILVERMAN: He didn't even submit a reply affidavit to my request.

THE COURT: Well, that's -- the Court has taken the whole record into consideration, the fact that this case has been on the calendar a half dozen times.

MR. SILVERMAN: It was. It was.

THE COURT: We've been up and down this hill, and --

MR. SILVERMAN: Not a half dozen -- that was on several times.

THE COURT: All right. So, we'll just --

MR. SILVERMAN: I feel -- I feel --

THE COURT: Your motion is denied. The respondent, I know, will continue to cooperate with you for the purpose of stipulating facts, if you desire to stipulate them. If you don't, that's -- that's your choice. If the respondent doesn't cooperate in the stipulation process, I suggest you bring that to the attention of the Court. But we're past playing around with interrogatories and we're past continuances; and the case is being set for December 1st.

MR. SILVERMAN: All I want to do, Judge, in fairness to all, is to cut down the time of -- for the Court to try this case.

THE COURT: Well, I found that trying to cooperate with you last time, Mr. Silverman, it didn't cut down much time. But we won't talk about that. I'm not hearing your case, so that's --

MR. SILVERMAN: I think we did, Judge. I think Your --

THE COURT: Okay. So anyhow, that's my ruling, Mr. Silverman, and the case will be calendared for trial December 1st. Good luck.

MR. SILVERMAN: Thank you.

(Whereupon the case was adjourned as described above)

A-353.

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 **et al** Name: FRANK L. SILVERMAN, **ET AL**

The foregoing pages, numbers 1 through 6 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by **Priscilla Friedersdorf** on **September 22, 1975** in the United States Tax Court located in **New York, New York**, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name)

October 3, 1975

(Date)

THE COURT: Well, I don't know. They're not ready at this time.

MR. BRODSKY: We have them all organized here in the Courtroom, Your Honor, by accompanying --

MR. SILVERMAN: Judge, I'm not prepared to accept them at this time.

THE COURT: Well, I'll admit the documents, Mr. Silverman, but they don't have -- there's no motion pending before me to require the petitioner to stipulate any documents. Now, we've got a motion as to what you have here, and that's all I can rule on. See? And if you want to put the documents in at the trial, you better have somebody here to identify them. He's entitled to it.

MR. KLETNICK: Can we amend our motion, Your Honor, at this time?

THE COURT: Not right here, no. All right. We come to the next objection that Exhibit 12 should contain an exhibit for the purchase of 1,000 shares of Atlas stock that was delivered to Mr. Menillo, and not included in the exhibit.

MR. SILVERMAN: Your Honor, may I be heard on that?

THE COURT: Well, now, let's -- let's -- you've been heard. Let's find out what -- what the --

MR. SILVERMAN: I submitted a lot of papers to Mr.

Menillo and these gentlemen now oppose moving for the application. And they didn't include it in this stipulation.

THE COURT: Well, I don't know that it helps you, but if you want it, why, I guess --

MR. SILVERMAN: Well, it'll save time with the Court.

THE COURT: Oh, okay.

MR. SILVERMAN: That's what I'm trying to do. I

662 tried my bill of particulars motions.

THE COURT: I never -- I've never known you to try and save time with the Court, Mr. --

MR. SILVERMAN: Judge --

THE COURT: -- Silverman, and you and I have had some past experiences.

MR. SILVERMAN: No.

THE COURT: So, let's -- don't get me off -- I've had a bad morning, anyway, see.

MR. SILVERMAN: No. No. No. I don't want to get you off.

THE COURT: The plane service was bad, and it's been a tough day, so --

MR. SILVERMAN: I don't want to get you off. No, sir, Judge; I want to --

THE COURT: So, let's not --

MR. SILVERMAN: I want to keep in harmony.

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UNITED STATES TAX COURT

"Exh.D"

FRANK L. SILVERMAN, et al
Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE
Respondent

DOCKET NO. 3506-68
9003-72
9004-72

LOCATION OF HEARING: New York, New York

DATE: January 20, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES:

Frank L. Silverman,
Pro Se

Theodore J. Kletnick,
David N. Brodsky,
Attorneys for Respondent

THE COURT: All right. So -- so -- your tactics are not to save time with the Court. You're entitled to it. I mean, I'm not saying you can't try your case any way you want to, see.

MR. SILVERMAN: In this particular -- in this -- Judge, in this particular situation I tried. I made three or four motions before this Court.

THE COURT: I know.

MR. SILVERMAN: Each one was knocked down.

THE COURT: All right.

MR. SILVERMAN: I don't know why, but --

THE COURT: Now, we can't even read Exhibit 12. It's upside down and it'd take a magnifying glass. But, I assume it's the Richard & Co. as the starting page, and then it follows that. Now then, Exhibit number 12. Now, you -- oh, you say that there should be another order in here, is that right?

MR. SILVERMAN: There should be some other exhibits. If we're going to stipulate --

THE COURT: These aren't all the purchases that you made. Is that right?

MR. SILVERMAN: Yes, sir.

THE COURT: I see. Okay. Well, do you have other purchases by the petitioner?

MR. BRODSKY: Your Honor, we received certain the more you can produce evidence that some of these deposits weren't income, why, the less the deficiency's going to be.

MR. SILVERMAN: Judge, I've given them the 1960 -- I show them the money was deposited. The money was disbursed. But the final item on my last sheet showed equal. There was no additional funds credited to me. There was no additional income credited to me. I've given them two years, '60 and '61. They haven't finished -- I don't know if they did. I intend --

THE COURT: Well, then -- then --

MR. SILVERMAN: -- to do the others the same way, Judge.

THE COURT: Then you should get those documents ready and offer those as a stipulation.

MR. SILVERMAN: I will give them the other three years, too. I am working on the others now. I've been working all along on those things. It takes a lot of time, but I'm working on them. I'll give them the other one's, too if they want. I'm willing to give them whatever I have.

THE COURT: Well --

MR. KLETNICK: Your Honor?

THE COURT: Yes, sir?

MR. KLETNICK: I might add one thing. The document -- the figures that Mr. Silverman gave us, which our agent is now in the process of analyzing, amount to about a $2,000.00 difference for each year.

MR. SILVERMAN: And that --

MR. KLETNICK: And that's very insubstantial when considered in light of the amounts involved in this case.

MR. SILVERMAN: Yes. The amounts --

THE COURT: Well, I think this -- I think this: He's got these various bank accounts. Why did you have two different accounts in the same bank, Mr. Silverman?

MR. SILVERMAN: Like the Merchants Bank?

THE COURT: Yeah.

MR. SILVERMAN: One was for clients and one was a personal account. I use it for everything. Payment of bills, payment of different things. I use them intermittently. I used them without paying too much attention.

THE COURT: Well, did you mingle the two then?

MR. SILVERMAN: Occasionally I did.

THE COURT: Well, that's --

MR. SILVERMAN: I did occasionally. Certain deposits I did.

THE COURT: Because -- I think really, if you're willing to bring in the information, why, I'd like to see the respondent do a little more work on these deposits. I predicated on -- on the stipulation. I can't see that -- I'm not prepared to say that the respondent has done very much in this case, frankly. At least, it doesn't show in the preparation of that stipulation. And I think we should try and give the gentleman credit for deposits that went into accounts that were to be paid out to the clients. Now --

MR. KLETNICK: Your Honor, we've eliminated substantial amounts in every year. We've --

THE COURT: Well, that's not the way I understood it. I understood these amounts were the amounts in the bank statements.

MR. BRODSKY: Your Honor, may -- the stipulation reflects the, I would say thousands of man hours of investigation by the agent and the special agent, trying to --

THE COURT: Let's not -- now, look. Let's not just talk and -- maybe somebody misled me here. It was my understanding that -- let's take any one of these bank accounts, 1961, Merchants Bank of New York, regular and regular special, that these were all of the deposits in that account. Is that correct?

MR. KLETNICK: Yes.

THE COURT: Well, what happens to the withdrawals?

MR. KLETNICK: The withdrawals were eliminated in the pleadings and the stat. notice.

THE COURT: How do you mean, eliminated? What do you do with the withdrawals?

MR. BRODSKY: If Your Honor will refer to the amended answers in this case, there are eliminations --

there are items that we know are -- have already been included elsewhere. For example, additional business income has been eliminated where it appeared that there was a duplication.

MR. SILVERMAN: Judge, let me show you -- let me call your attention to 1960 bank deposits. They list a loan that I made from the bank as a deposit, $1,994.81. It shows you how far they went with this thing here. Also, a check for my work, $341.02. They call that a deposit, unexplained income. Many things they did over here that they shouldn't have done. That was a loan. I had the slips. I had the loan slips. I happened to find it, after looking through the morass of papers.

THE COURT: I don't see this eliminations schedule that Mr. Menillo was talking about.

MR. SILVERMAN: I have checks for every item that I paid clients.

THE COURT: All right.

MR. SILVERMAN: It's more than substantial. It covers the whole thing, Judge.

THE COURT: This -- this was back in '73. "We've listed all the various accounts. This is Mr. Menillo speaking -- "We've listed all the various accounts and the deposits for the year,"if you want to call it, lumping it together, the total deposits for the year. Then we

MR. BRODSKY: From the total deposits. And the resulting figure is unidentified deposits.

THE COURT: Yeah, but that -- but -- well, I think that I'm going to have to rule against the respondent on this stipulation, because actually, I don't see that the stipulation serves any useful purpose, as far as the Court is concerned. It's not going -- it's not going to shorten the trial of this case at all. I think if you want to stipulate, we should stipulate to everything. And I think the only thing to do is to deny the opinions motion and continue the case. The case is not going to be ready for trial, at this rate, by next month.

MR. SILVERMAN: If they will give me my bill of particulars, identify every deposit --

THE COURT: Now, we're not -- don't worry about the bill of particulars. If they want to come up with a stipulation, it's as good as a bill of particulars, but the problem the Court has with this stipulation is that it's incomplete. It only says one -- gives one side of the coin.

MR. KLETNICK: Your Honor, I don't think it'd be in the best interest of the Court or the parties to continue the case again. Respondent is in a position to try this case. We have -- our agents -- we have an agent assigned full time that's working on it. We spent substantial -- substantial number of hours.

THE COURT: Well, counsel, if you have an agent full time working on this case, you can come up with a better stipulation than this, see.

MR. KLETNICK: Well, the records are voluminous, but the fact remains, Your Honor --

THE COURT: If you can -- if you can come up with an agreed stipulation with the calendar call next month, we'll try the case, but -- or a stipulation that should be agreed to, but I want everything in the stipulation, not only what you're interested in.

MR. KLETNICK: We're in a position today --

THE COURT: Well, if you're in a position to do it --

MR. KLETNICK: -- to stipulate to every document that's involved in the case.

THE COURT: Well, all right. Well, do it. But I can't accept something --

MR. KLETNICK: Well --

THE COURT: -- verbally. It's got to be ready and offered. You don't have anything ready to offer today, do you?

MR. KLETNICK: We could sit here and offer these exhibits in one at a time.

THE COURT: Oh, you don't -- you might as well do that at the trial. I'll be glad to come back this afternoon, and if you think you can get a stipulation ready by then.

But --

MR. KLETNICK: I think we can get a stipulation ready, but I doubt that Mr. Silverman would agree to it.

THE COURT: Well, I might entertain a motion at the trial to admit some, but I -- the problem with this stipulation is that -- first place, as I say, it's not done properly, number one. Number two, it only tells half the story, and the other half, you say, look in your answer, and you -- if you're going to stipulate these accounts and stipulate it on the basis of account of what he's being charged with and what he should be entitled to get credit for, let's put it all in one document. See. And if you don't want to do it, why, we'll probably be going through this every year that I come up here for the next ten. I don't know. So, respondent's motion is -- will be held in abeyance until the calendar call. I want cooperation out of you by the calendar call.

MR. SILVERMAN: Yes, Your Honor.

THE COURT: I think the easiest thing to do with you, Mr. Silverman, if we don't get some movement out of you, is to just take a motion to default, see.

MR. SILVERMAN: No. I'm ready. If they want to try it, I'll try it. I'll bring the -- I'll bring in --

THE COURT: I'm not talking about trying it. I'm talking about getting together first and let's -- let's get --

let's get -- get it down to what the real amount is --

MR. SILVERMAN: I --

THE COURT: -- and once you get it down to that, there's no point in your trying it.

MR. SILVERMAN: Judge, I have cooperated with them. I was up to their office a half dozen, maybe a dozen times. I gave them -- I've given them whatever I had, and they keep on telling me --

THE COURT: Well --

MR. SILVERMAN: -- they're not ready yet. They're not ready to make a determination.

THE COURT: The respondent can come up with a new stipulation on Monday the 24th of February, is it, or a new --

MR. SILVERMAN: 23rd is the date, Judge.

THE COURT: 23rd of February, and -- and you can come in with a list of -- and I want a written list of the precise documents that you think were left out, that should be in the stipulation. And if it looks like we're ready for trial, we'll try it, but if we aren't ready for trial, we won't. That's all. But I'm not -- that's why I came up here, in an effort to see whether we couldn't be ready for trial.

MR. KLETNICK: Your Honor, would you -- would it be possible for you to direct Mr. Silverman to stipulate as the Rules require, to all documents, the authenticity of which is not in dispute?

THE COURT: Yeah, he's -- and that's no problem whatsoever. But, I also want to direct you to do the same thing, you see.

MR. KLETNICK: Yeah. We -- we're in perfect agreement.

THE COURT: I haven't seen anything that goes the other way in this stipulation, see. Now, I'd be the first to admit that Mr. Silverman tries your patience. He's been trying mine up here for several years, but that's no excuse for --

MR. SILVERMAN: No, Judge. I'm not trying that at all.

THE COURT: I tell you, you're your own worst enemy, Mr. Silverman. I've been trying to tell you that, but I gave up.

MR. SILVERMAN: No, Judge, I think --

THE COURT: I say, I gave up.

MR. SILVERMAN: I do whatever I think I should do. I cooperate --

THE COURT: When I found your case on the calendar, Mr. Silverman, I was sad all that day.

MR. SILVERMAN: Judge, I tried to save a lot of time and effort. I didn't succeed in the motions.

THE COURT: Oh, I know you do, Mr. Silverman.

Well --

MR. SILVERMAN: If I had my motions granted, this wouldn't come to this pass --

THE COURT: If you don't want to have this decided against you by default, you better get down here and get to work between now and the 24th.

MR. SILVERMAN: I'll cooperate with these fellows. Anytime they want me, I'll be there. I'll give them whatever I have.

THE COURT: Get the documents out, see. Get the documents out. And we'll continue this until the -- after the calendar call on the 24th then.

MR. SILVERMAN: 23rd of February?

THE COURT: 23rd. Excuse me. 23rd of February.

MR. SILVERMAN: Thank you very much for your patience, Judge.

(Whereupon the case was adjourned as described above)

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. **3506-68 et al** Name: **FRANK L. SILVERMAN, et al**

The foregoing pages, numbers **1** through **56** inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by **Donna Dickert** on **January 20, 1976** in the United States Tax Court located in **New York, New York**, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name)

January 29, 1976
(Date)

A-368-a

UNITED STATES TAX COURT

FRANK L. SILVERMAN, ET AL
Petitioner
vs
COMMISSIONER OF INTERNAL REVENUE
Respondent

Exh. "E"

DOCKET NO. 3506-68,
et al

LOCATION OF HEARING: New York, New York

DATE: February 24, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES:

Frank L. Silverman
Pro Se

David N. Brodsky
Theodore J. Kletnick
Attorneys for Respondent

P R O C E E D I N G S

THE CLERK: Court's in session. Be seated please.

THE COURT: Morning.

THE CLERK: 3506-68, 9003-72, 9004-72. Frank L. Silverman, and related petitioners.

MR. SILVERMAN: Frank L. Silverman appearing pro se. Frank L. Silverman, Anna Silverman.

MR. BRODSKY: David Brodsky for respondent.

MR. SILVERMAN: 258 Broadway, New York.

THE COURT: All right. Now, you parties have a stipulation that you want to submit at this time?

MR. BRODSKY: Your Honor, we have an abbreviated stipulation. We still have pending, a motion to compel Mr. Silverman to stipulate to our documentary evidence. I'd request a ruling on that motion at this time. And also submit the abbreviated --

THE COURT: Motion will be denied. All right, Mr. Silverman, you want to make an opening statement here?

*** MR. SILVERMAN: I would like to make a specific and pointed request of the Court. I received all these papers, if Your Honor will notice on the desk, late last week, and it's physically impossible to give them a thorough examination to shift -- pick out what's important -- what isn't important, so perhaps after I look at those papers, Mr. Brodsky and I can go into a further stipulation, taking away much lost time from the Court and from ourselves. For this reason, Your Honor, at this time, I'm going to ask for a continuance of this case, for a reasonable time that the Court may see fit to do, because to go into all these things will take months to get rid of, to prove every item. They have a lot of stuff over here, Judge, and as a practicing lawyer, through all of these years I've accumulated this information. It would be a burden upon the Court to tax the Court and the Court's patience with all these little exhibits. So, if I would be given additional time, a reasonable time, I'm not specifying how much time the Court --

THE COURT: Well, Mr. Silverman, --

MR. SILVERMAN: Yes, sir.

THE COURT: -- the record shows that the petition in this case was filed seven and a half years ago.

MR. SILVERMAN: Your Honor, I -- I -- for 2 years I made motions for the information that I got last week, for 2 long years, in fact, the last motion was -- I made before Your Honor, I -- if that motion would have been granted, we wouldn't have been here with this here -- bunch of stuff over here, burdening everybody concerned with this case. It isn't the time when we filed the petition is when the information is given to a petitioner so he can prepare his case, and take the loss of time away, The Court should shouldn't have to go into these things. The purpose of my reque at this time, Judge is one thing. I want to cut down as much time, as I can. Mr. Bodsky and I were communicating almost every day last week, and in several weeks before. We tried to eliminate a lot of stuff, and Mr. Bodsky will tell this Court that I gave him whatever I had, but he gave me whatever he had to, and I can't -- I can't get into it, Judge.

THE COURT: We've had this thing up, gosh, I don't know how many times.

MR. SILVERMAN: Judge, but not of this information that was given to me, we never had it, if we had that, there would be no problem today. We'd go right through it.

THE COURT: The problem is Mr. Silverman, that with respect to all but one of these years, you have the burden.

MR. SILVERMAN: I know.

THE COURT: It's not up to the government to give you all this information.

MR. SILVERMAN: I understand. The burden will -- I can meet by looking through these papers. Now, let me point out one thing to this Court. They've given me dividend checks, cancelled checks, now I'm going to look through it, if that's the checks that I used, I -- I will stipulate with them. It will take so much time away from the Court, and so much work from the Court. Why should we go over those items, when we can obviate the necessity of doing this.

Just give me a little time so I can look over these things. Mr. Brodsky will tell you the last paper I got was yesterday. And I'm not telling the Court any stories. The Court can very well get verification for the statements I made.

MR. BRODSKY: May I be heard, Your Honor?

THE COURT: You may Mr. Brodsky.

MR. BRODSKY: We would object to any continuance. These are the same records that have been available to Mr. Silverman over the last 2 years. They are in fact copies of his very own bank records. He's had sufficient time to obtain these records and analyze them on his own.

MR. SILVERMAN: Judge, if Mr. Brodsky had given me -- didn't oppose my rule 71, I wouldn't have had this adjournment. If the -- if the -- granted to me -- I was in Washington several times, made motions for such information, if that would be granted for me, I wouldn't be in this predicament now. Now I got the information I can work and prepare my case properly for the Court. I don't want to come in and have to prepare, not knowing what these documents portend. It would really a travesty of justice, if I just go through it with just a routine, without knowing the facts in these files. Your Honor, you can see I got 7 files given to me by Mr. Brodsky last week. Give me an opportunity to look into it. I'm ready to meet the issues, whatever Your Honor says I'll do. I don't care if it's even a couple of weeks from now, but I want to come in prepared. Now, I'll work day and night on it. I went to sleep this morning 2:00 trying to match up things. It's a number of years, it's 6 years, going back 16 years, Judge. That's a long time. A long time has elapsed since -- I made motions. I didn't sleep on this. Each motion I made I was denied. What am I to do? I can't rip the wall down. I am bound by the rules of the Court. I'm an officer of the Court, and I wanted to retain that position. I don't want to come in and give anybody arguments or a hard time. I want to obviate. I assure the Court, this time, if I have checked through the dividend checks, with my records, and my -- see -- I will concede. It'll take away so much time, it'll take away about 2 weeks of trial work in this thing if I do that. It'll come out to a few narrow issues. We got stock, we got surrender of stock, we got receipts of sums of money that I can prove to the Court that I got for clients and clients escrow funds. It will be a very simple thing. This would be complex, look what I got on here Judge. I'd have to drag a big valise to get the papers in here. Do you want me to go through with it, okay? Your the boss. Whatever you say, I can't say anymore. I've said everything I have to say. It's up to Your Honor. I think you ought to give that consideration. Your Honor, will -- I'm sure Your Honor --

THE COURT: Mr. Brodsky, has Mr. Silverman ever been furnished with a statement showing the makeup of the amounts with which he's charged as having received as income in the years in question?

MR. BRODSKY: Well, Your Honor, --

THE COURT: I know you gentlemen don't like to furnish that kind of information. I have the same problem in another case.

MR. BRODSKY: Not at all Your Honor. We're quite willingly furnished Mr. Silverman that.

THE COURT: Well, when? When did you give him a schedule showing just what he -- just the make up the amounts that he was charged with income?

MR. BRODSKY: There -- there in effect has been 2 audits in this case. The first audit that when into the statutory notice.

THE COURT: Because I don't think the statutory notice settles very much, does it? We always have that problem. Before we adopt the new rules, and I guess they're going to cure it, why, statutory notices used to just say unreported income, X dollars, isn't that right?

MR. SILVERMAN: That's what they did, Judge.

THE COURT: This notice certainly didn't say anything at all. It's only a couple pages long here.

MR. BRODSKY: Since, since -- since the sending of this --

THE COURT: So, when was he given a statement showing --

MR. BRODSKY: Well, we did give him one today.

MR. SILVERMAN: Just this morning, Judge.

MR. BRODSKY: That's correct.

MR. SILVERMAN: Before the opening of the Court.

MR. BRODSKY: Only because we just finished the audit on Friday.

THE COURT: I see. So, do we have a schedule that we can put in here showing the amounts that are involved?

MR. BRODSKY: Yes, we do, Your Honor.

THE COURT: Let's put that in as a Joint Exhibit for identification.

MR. SILVERMAN: Your Honor --

THE COURT: Do you have a copy of that schedule, is that right?

MR. SILVERMAN: It is very illegible Judge. I can't make it out. I'll let you look at it, Your Honor. It's illegible. You can't make these out. My eyes aren't so good, no better eyes couldn't make it out.

MR. BRODSKY: Your Honor, I understand the problem, that because of the haste with which this trial date was set, we --

THE COURT: I don't think -- I've had worse that I've received here, Mr. Silverman, it's not that bad. Now, these show the categories. Do we have a schedule showing what the dividend income consisted of? The company's and the amounts and all.

MR. BRODSKY: Your Honor, we have schedules, although we have only given Mr. Silverman the one you have before you now. We have schedules --

THE COURT: Well, I think before we proceed we're going to have to give him the schedules here. In other words, I don't know how he can -- we've had this problem before, and--

MR. BRODSKY: I agree Your Honor.

THE COURT: All right. So, let's put this in Exhibit -- Joint Exhibit --

THE CLERK: 7-F.

THE COURT: -- 7-F for identification. Now, what do we have here to show the dividends for each one of these years involved?

MR. BRODSKY: Your Honor, we have schedules that are reflecting every item in the entire --

THE COURT: Well, shall we put that in?

MR. BRODSKY: If Your Honor will give us an opportunity to reproduce the schedules?

THE COURT: All right. Let's recess here for about a half hour or so, and reproduce all of these schedules, and we'll put them all in for identification. And then we'll decide where we're going to go from there.

gin Tape 4

(Recess)

THE CLERK: Court is now in session. Be seated please.

THE COURT: Well, Mr. Brodsky, do you have, now, the schedule showing the dividend income that we --

MR. BRODSKY: Yes, we do, Your Honor.

THE COURT: All right.

MR. BRODSKY: That would be summary schedule which we've designated 8-H--

THE COURT: 8-H.

MR. BRODSKY: -- break downs by year, which would be designated 9-I through 14-N.

THE COURT: 9-I through 14-N.

MR. BRODSKY: Mr. Silverman has already been given copies of every schedule we have.

THE COURT: All right. Can we have those marked, Mr. Clerk, for identification? That takes us through what exhibits numbers?

THE CLERK: 14-N, I think.

THE COURT: 14-N. Those were the dividends. 8-H to 14-N. Now, do we have schedules showing the interest income?

MR. BRODSKY: Yes, we do. That would be schedule 15-O, schedule of interest income for all years. Schedule 16-P, interest income analysis, all years, Frank Silverman, and 17-Q, interest income analysis, all years, Anna Silverman.

THE COURT: All right. That's a schedule of interest income. That would be marked for identification. Ah, wages, is that just taken from the return?

MR. BRODSKY: That's correct.

THE COURT: Professional income?

MR. BRODSKY: That would be schedule C.

THE COURT: From the return, hum? Less expenses.

MR. BRODSKY: Um-hum. Excuse me. Commission income would be --

THE COURT: Oh, yeah, excuse me, commission income.

MR. BRODSKY: Right. Schedule 18-R, summary of commission income, with breakdown all years.

THE COURT: All right.

MR. BRODSKY: And also, professional income, schedule 19-S, schedule of professional income, all years--

THE COURT: 19-S is --

MR. BRODSKY: -- with separate breakdowns.

THE COURT: -- professional income. All right.

MR. BRODSKY: Also, schedule 20-T, schedule of back up information, professional fees.

THE COURT: All right. 20-T is details. Capital gains, is that from the return or is that --

MR. BRODSKY: No, we did an additional analysis on the capital gains. That would be schedule 22-V. Capital gains all years.

THE COURT: All right. 22-V. Capital gains.

MR. KLETNICK: Excuse me, Your Honor, Theodore J. Kletnick also for the respondent.

THE COURT: Right.

MR. KLETNICK: Exhibit 21, which we've marked for identification, 21-U is the schedule C expenses which respondent allowed petitioner. For all years.

THE COURT: Schedule C expenses, all right. That'll be marked for identification.

MR. BRODSKY: Capital gains was schedule 22-V.

THE COURT: 22-V is capital gain.

MR. BRODSKY: That's right. All years, summary and explanation.

THE COURT: And then we've got unexplained something there. Deposits in banks.

MR. BRODSKY: We have unexplained bank deposits and brokerage accounts there. The first schedule deal with bank deposits, schedule 23-W.

THE COURT: All right. 23-W is bank deposits.

MR. BRODSKY: W, master summary of bank deposits all years. Schedule 24-X, summary of explained and unexplained deposits by banks, all years.

THE COURT: Um-hum.

MR. BRODSKY: And the brokerage accounts, schedule 25-Y, master summary of brokerage accounts, all years. And schedule 26-Z, summary of explained and unexplained deposits by brokerage accounts, all years.

THE COURT: All right.

MR. BRODSKY: And, an additional schedule, schedule 27-AA, additional eliminations based on information provided by Mr. Silverman last Friday, February 20, 1976.

THE COURT: Now, let me ask you Mr. Brodsky, except for schedule 27-AA, are all these schedules prepared from the records which you have turned over to Mr. Silverman there on the desk?

MR. BRODSKY: That's correct. Every entry, every item, every elimination is based on documentary evidence, turned over to Mr. Silverman.

THE COURT: Does counsel move that these be submitted in evidence, subject to the petitioner's right to verify the information set forth therein?

MR. BRODSKY: That's correct, Your Honor.

MR. SILVERMAN: I'd like to have the opportunity to examine those. That's why I'm making notes.

*** THE COURT: All right, Mr. Silverman. That's exactly right, Mr. Silverman. The Court will admit in evidence schedules 8-H through 26-Z.

MR. BRODSKY: 27-AA.

THE COURT: 27-AA is not based on the records, but that is I gathered, is really, you might say favorable to the petitioner.

MR. BRODSKY: That's correct.

THE COURT: Anyway, through 26-Z, it's the Court's understanding is based upon -- is a summary of the -- of the records that have been turned over to the petitioner for examination, and those schedules will be admitted in evidence, as in the case of summaries, under our rules, subject to the right of the petitioner to check the summaries and call it -- bring it to the attention of the Court, wherein an item may be erroneous included, omitted, and the like.

MR. BRODSKY: That's correct, Your Honor.

MR. SILVERMAN: Or misstated?

THE COURT: Well, if -- I mean, if there's any mistake in these schedules, subject to your right to verify --

MR. SILVERMAN: Yes, I will not object to that statement, Your Honor.

THE COURT: -- subject -- all right. So, that'll be admitted on that basis. So, that now, I guess brings us to the case to the point where the ball's in your court, huh, Mr. Silverman?

MR. SILVERMAN: Now, I'm going to renew my application that I be given an opportunity.

THE COURT: Now, --

MR. SILVERMAN: A sufficient opportunity.

THE COURT: What -- what do you mean by sufficient opportunity?

MR. SILVERMAN: So I can go over these items --

THE COURT: Well, what are we talking about in terms of time?

MR. SILVERMAN: Yes, sir, that's what I have in mind.

THE COURT: How much? How much time do you think you're going to need?

MR. SILVERMAN: Judge, with all this voluminous stuff, it would take me --

THE COURT: Well, I would suggest, of course Mr. Silverman, that unless you're going to hire yourself some accountants, that a spot check would be a more practical basis of approaching this, but --

MR. SILVERMAN: At this point, Your Honor --

THE COURT: -- regardless of that I found that very difficult to get you to take my advice, Mr. Silverman. That's why I've never sent you a bill, maybe that's why you don't take it serious. I had great difficuly in persuading you to take my advice.

MR. SILVERMAN: Many times I do.

THE COURT: Now, I'm going to give you until April 1, that's April Fool's Day, I think it's -- it's a significant date.

MR. SILVERMAN: No, Judge, don't do it the first, do it the second, don't do it the first.

THE COURT: So that -- we will set this case down for call in this room, or in the small Courtroom as the case may be on Thursday, April 1.

MR. SILVERMAN: Judge, make it the second please?

THE COURT: I'd -- that's a Friday. Friday's a bad day to me.

MR. SILVERMAN: All right. Whatever you say.

THE COURT: So, on Thursday April 1, at which time you have to be prepared to tell us to what extent you have found any error in these schedules. And, to what extent you may be prepared to show that not withstanding these schedules, you're entitled to other credits, deductions and the like.

MR. SILVERMAN: Judge, at this time, I would --

THE COURT: My advice to you again, is that I'd still find -- try and find myself some young accountants or a few adding machines, and if you're going to check every one, but I -- nobody's infallible, and the respondent's people may have made a -- an addition or subtraction error here and there, but checks out -- for your purposes, I would suggest that you spot check this, but in any event, you have until April 1. Now, I don't want you to come in here on

April 1, and say "Judge, I've been busy and I just haven't had a chance to check these schedules, ", so --

MR. SILVERMAN: Again, Judge, you're putting me in a very precarious position. On April 1, the accountants, if I'm going to get somebody, might be able to --

THE COURT: That's why you should get it done pretty quickly.

MR. SILVERMAN: Just a moment please. Listen to me a moment.

THE COURT: I know you're going to say they are going to be busy filing tax returns, I see.

MR. SILVERMAN: They are, yes--

THE COURT: Right. I know. So that's why I -- that's why you should get it on it right away.

MR. SILVERMAN: I'm going to get on it right away. I got to sort out these papers that I picked up from them. Could you possibly make it, Judge --

THE COURT: I think the respondent has done all of this for you and --

MR. SILVERMAN: Yes, they did, and they gave me copies of everything that they -- they did.

THE COURT: And you've got copies of everything now, and it's -- so --

MR. SILVERMAN: Just -- may I have May 1, so I have a chance to get somebody to help me with this?

THE COURT: No, unfortunately, we have other schedules then.

MR. SILVERMAN: I'm not stalling Judge, I want you to know. I want to get on with this. I want to get through with this. This has been happening for a long time with me.

THE COURT: Well, and, so, you be prepared on April 1, to let us know. Frankly, I think Mr. Silverman, that it's a waste of time and effort to try and collate every item on here. Now, if you're talking about to try and check your recollection or your efforts to show that there's a duplication or an item of unexplained deposit came from someplace else, that's different, but just to tie in these schedules to the extent that even if there's a $1,000.00 off here, it might be in your favor, it might be in the government's favor. I'm not --

MR. SILVERMAN: Judge, that's something I have in mind. I have in mind a couple of items that I spot checked this morning on capital gains there was error.

THE COURT: That shouldn't take until April 1.

MR. SILVERMAN: I just spot checked 2 items, I didn't look it through thoroughly.

THE COURT: So, we'll be prepared on April 1 to hear your -- your explanation as to why you think these schedules are right or wrong, and we have agreed here today, that -- subject to your verification, these are in evidence now, right?

MR. SILVERMAN: Yes, sir. At the same time Your Honor, I want to reserve my right to make any motions with respect to the statute regarding the -- all of these years, from 1960 to 65.

THE COURT: You mean as to the statute of limitations?

MR. SILVERMAN: Yes, sir. Yes, sir. It's a very serious question to me, I want to reserve my rights --

THE COURT: That's fine. All right. The government --

MR. SILVERMAN: By starting --

THE COURT: -- the government concedes that with respect to one year, they -- the statutes bar -- bars any assessment in the absence of the finding of fraud. Now, we're not --

MR. BRODSKY: Your Honor, I'm not -- not sure -- I'm not sure that we have made that concession.

THE COURT: Well, then the statute's wrong isn't it?

MR. BRODSKY: I'll have to check the dates on --

THE COURT: I think you'll find that. It's been my understanding that everybody here, as to 1960, why, --

MR. BRODSKY: As I say, there's a 25% admission, --

THE COURT: Well, yeah. But the statutes wrong in the first -- well, I wouldn't say except the fraud. That the normal statute is wrong as to 1960.

MR. BRODSKY: I'll have to check the dates.

THE COURT: Yeah, well I think you can check it again, because I think --

MR. SILVERMAN: Judge, I'm sorry for interrupting. Again I want to urge upon the Court, I have a very serious question of statute, even in the fraud cases.

THE COURT: Well, if you have a question, we would be glad to hear it, but I think once you plead guilty of the fraud, I don't know of any -- any law or decision or anything else that doesn't say that the period for assessment is open forever, Mr. --

MR. SILVERMAN: Not forever, Judge. They've got statutory periods even after that, to pursue the civil side of the case.

THE COURT: I see. Well, I'd be glad to hear from you on that. You're not conceding any of your rights to your legal issues. I'm just saying all we've done today is we've said as of this date, this is the best record of your income expenses and deductions. And it'll be taken as the record in this case, and the absence shown by you that there's something here that's incorrect. And as I understand it, you have no objection to that?

MR. SILVERMAN: I have no objection.

THE COURT: So, on that we're going --

MR. BRODSKY: Your Honor, I'd like to advise the Court, that we also intend to put witnesses on in April 1.

THE COURT: We don't need any witnesses on April 1, if these go in.

MR. BRODSKY: Well, Your Honor, we still have the fraud year for 1960 --

THE COURT: Well, he's around doesn't these have '60? This is in.

MR. BRODSKY: Yes, they do.

THE COURT: All right. This shows what he's -- what -- what -- prima facie, what his income is, you see. That's the whole purpose of putting these in.

MR. BRODSKY: That's right. As you know, there's no collateral estoppal for 1960?

THE COURT: I know that, but the petitioner has agreed that we're going to accept these subject to his right to check out each and every line if he wants to, and the purpose of that is to do just like the Stip -- we've reached the stipulation stage as to these schedules.

MR. BRODSKY: Your Honor, there may be evidence that we feel necessary that --

THE COURT: Are you going to put somebody in and say you saw him in a bar or doing something else, that's fine, but if you're going to put -- look, you can put in anybody you want, see, but if you want to reopen these schedules, then they won't come in this way.

MR. BRODSKY: Your Honor, --

THE COURT: I've done your job for you, now go back and talk about it, and then we'll talk about it again. I don't care what you do. I'm just saying I'm setting it down for April 1. I'm not guaranteeing you that I'm going to sit here and hear a parade of revenue agents testify as to what's in these schedules.

MR. BRODSKY: Your Honor, there are specific items that aren't reflected in that schedule that are still in dispute, and we reserve our right to put witnesses on.

THE COURT: Well, if you don't have the documentation, the agents aren't going to be able to testify to it anyway.

MR. BRODSKY: These are not agents that I'm referring to.

THE COURT: I don't care anybody, if they don't have any records and these reflect as the Court understands it, all the records within are the copies of the records within your possession, is that right? Both for and against the taxpayer. Is that correct?

MR. BRODSKY: There are items that are still in dispute for which we di l not --

THE COURT: I don't care whether they are in dispute or not. I'm asking you a question. Will you answer me? These reflect all the records which you have available, is that correct?

MR. BRODSKY: They reflect the result of our analysis of all the records.

THE COURT: Of all the records you have available?

MR. BRODSKY: There are items that he raised that he requested illuminations farther --

THE COURT: All right. If he doesn't -- that's wholly aside from this.

MR. BRODSKY: I simply advise the Court that we may present witnesses to you on April 1.

THE COURT: If you have somebody that saw him taking some money, or something like that, that isn't on these records, that's one thing. Now, if your idea is that you're going to put some agents on here and go over these same records, the Court has no intention of sitting up here and hearing that. That's why I want through this performance this morning, see. And I don't know what you have in mind, but you don't need to warn me about what you're going to do, see, when it comes up I'll decide again, just like I did today. All right, I'll see you April 1 gentlemen.

MR. SILVERMAN: Thank you very much..

MR. BRODSKY: Thank you, Your Honor.

(Whereupon at 11:35 A.M. the case was adjourned as described above).

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68, et al Name: Frank L. Silverman, et al

The foregoing pages, numbers 1 through 24 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Karen Garlick, Donna Dickert on February 24, 1976 in the United States Tax Court located in New York, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name)

March 12, 1976
(Date)

A-393

UNITED STATES TAX COURT

FRANK L. SILVERMAN

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

DOCKET NO. 3506-68

LOCATION OF HEARING: New York, N.Y.

DATE: June 21, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES:

Frank L. Silverman,
Pro Se

Theodore J. Klotnick
and David Brodsky,
Attorneys for Respondent

PROCEEDINGS

THE CLERK: Be seated, Court is now in session. Docket No. 3506-68, and two related dockets. Frank L. Silverman, et al. Gentlemen, state your appearances for the record please.

MR. SILVERMAN: Frank L. Silverman, Pro Se and also on behalf of petitioner, Anna Silverman.

MR. BRODSKY: David M. Brodsky for the respondent.

MR. KLETNICK: Theodore J. Kletnick for respondent.

THE COURT: Well gentlemen, good morning.

MR. BRODSKY: Good morning, Your Honor.

MR. KLETNICK: Good morning, Your Honor.

MR. SILVERMAN: Good morning.

THE COURT: Now, you know Mr. Silverman, this case has been on calendars and call and all down around here for I guess at least 3 years if not 4 years, so this week's going to be the finale and there's a towel there, I know that your -- you make compassion pleas and all and I want you to have a crying towel there for you and we're going to go methodically and slowly and trust maybe you can show us where the respondent's computations are -- are incorrect. So --

MR. SILVERMAN: Your Honor, I intend to do more than that.

THE COURT: Well, that's fine --

MR. SILVERMAN: Without a use of a towel.

THE COURT: Okay. Well I just wanted to be sure you had it -- had all your props, you know, because you're pretty good.

MR. SILVERMAN: Well, under the circumstances, what they put me through with all this work --

THE COURT: Now, wait a minute Mr. Silverman, the reports I have is that they have rarely seen you, so I don't know.

MR. SILVERMAN: I've been working --

THE COURT: Good --

MR. SILVERMAN: -- like in you --

THE COURT: -- I'm glad to hear it.

MR. SILVERMAN: -- so to speak.

THE COURT: I'm glad to hear that. Have you got an offer to make them?

MR. SILVERMAN: Well, you can't talk to people who are not realistic.

THE COURT: All right, well I'm --

MR. SILVERMAN: If they would be realistic, I would talk to them.

THE COURT: -- I'll -- I'm realistic and I'll listen.

MR. SILVERMAN: Oh, I know you are Judge. I know --

THE COURT: Okay.

MR. SILVERMAN: -- you are very realistic.

THE COURT: Okay. Now, do you want --

MR. SILVERMAN: Whatever you --

THE COURT: -- you want to start then Mr. Silverman?

MR.SILVERMAN: I'd like to start if the Court pleases.

THE COURT: All right.

MR. BRODSKY: Your Honor, may I -- may I be heard? I have a few concessions --

-THE COURT: Oh, very good.

MR. BRODSKY: -- beyond --

THE COURT: Do you have them in writing there that will facilitate things or --

MR. BRODSKY: Yes, I do. Let me first --

THE COURT: Yeah, read them --

MR. BRODSKY: -- explain them to the Court.

THE COURT: All right.

MR. BRODSKY: For the year 1960, Mr. Silverman according to our records sold some Cosden Petroleum stock and we had information on approximately five -- on the basis of approximately 500 of the 600 shares of the stock. We -- we are willing to concede the additional basis on the remaining 100 shares based on an average cost basis for the other shares for which we did have a basis. This --

THE COURT: All right.

MR. BRODSKY: -- this results in additional basis for Cosden Petroleum stock proceeds received in 1960 in the amount of $2,250.00 which because of the Section 1202 deduction, reduces his taxable income for 1960 by $1,125.00.

THE COURT: All right.

MR. BRODSKY: For year 1962, our records indicated the receipt by Mr. Silverman of proceeds from the sale of property owned by a Dorothy Sorell.

THE REPORTER: Can you spell that please?

MR. BRODSKY: Yes, I believe that's S-o-r-e-l-l.

MR. SILVERMAN: Double l. S-o-r-e-l-l.

MR. BRODSKY: We didn't -- we didn't have information concerning Mr. Silverman's fee arrangements, so on. We believe he said he did it as a favor and the proceeds of that sale had gone into the unexplained deposits for 1962. And we concede that the amount of these proceeds represent escrow amounts or amounts held in trust by Mr. Silverman for Mrs. Sorell and this amount reduces the unexplained deposits for 1962 by $2,184.17. We have the master summary which would be updated to reflect these two concessions. The master summary presently is 7G and I would offer the updated summary as Exhibit 27-AB.

THE COURT: So 27-AB will take the place of

7-G?

MR. BRODSKY: That's correct, it supersedes 7-G.

THE COURT: It will be received as such. Does Mr. Silverman have a copy of that?

MR. SILVERMAN: I have it now Judge, thank you.

THE COURT: All right.

MR. SILVERMAN: Now, may I be heard Judge?

THE COURT: Yeah, just a minute, let me get this --

MR. SILVERMAN: At this time, I would offer as evidence --

THE COURT: You -- you have to stay --

MR. SILVERMAN: -- I'm sorry. At this time, I'm offering a letter from the U.S. Treasury Department, Internal Revenue Service dated November 22, 1967 which letter I exhibited to Mr. Brodsky, there is no objection for introduction of same. I offer that into evidence.

THE COURT: All right.

MR. KLETNICK: No objection.

MR. SILVERMAN: I say this for the Court.

THE COURT: That will be received.

THE CLERK: That will be --

THE COURT: This -- this is --

THE CLERK: This will be Petitioner's Exhibit 29, Your Honor.

THE COURT: 28, this other is 28-AB, is that right?

MR. SILVERMAN: Now, I'm going to ask Mr. Brodsky to make available to me one of the Revenue Agents so I can ask him a few questions. I'm making him my witness, I'm mindful of the procedure. I'd like to ask him several questions --

THE COURT: All right.

MR. SILVERMAN: -- before we proceed further in this matter.

THE COURT: All right. Which -- who do you wish --

MR. KLETNICK: Your Honor, if the Court please, we would like to put one of our agent's on just to introduce him and then Mr. Silverman can go on from there.

THE COURT: Okay.

MR. SILVERMAN: All I want -- you want to introduce him --

MR. KLETNICK: We call Cal Wallace.

THE COURT: We'll swear him just as soon as the Clerk gets back from that telephone --

THE CLERK: You so solemnly swear the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. WALLACE: I do.

THE CLERK: Be seated and state your full name and address for the record.

MR. WALLACE: My name is Calvin Wallace, 121A Tierney Drive, Cedar Grove, New Jersey.

DIRECT EXAMINATION

BY MR. KLETNICK:

Q What's your occupation?

A I'm a Revenue Agent.

Q For how long have you been a Revenue Agent?

A Four years.

Q Did there come a time when you examined the Income Tax Returns of -- of Frank L. Silverman for the years 1960 through 1965?

A Yes, for --

MR. SILVERMAN: Your Honor, I'm not making him my witness now, is he going to examine --

THE COURT: That's --

MR. KLETNICK: No further questions, at this time.

[illegible]R. SILVERMAN: -- oh, that's all I wanted the record to show.

THE COURT: Okay.

MR. SILVERMAN: All right, very good.

CROSS EXAMINATION

BY MR. SILVERMAN:

Q Mr. Wallace, you had occasion to prepare schedule for this Court in connection with my returns?

A Yes.

Q You -- you prepared those schedules together with Mr. Howard -- Neutuch?

A Yes.

Q And would you tell the Court how you received that information or where -- did you go back to the original assessment or Notice of Deficiency dated April -- September 15, 1972?

A We reviewed those -- that petition and we took the documents from the -- Mr. Brodsky and Mr. Kletnick, they provided us which had been exhibits in a prior case.

Q You -- you didn't make your schedule fresh and new, independent of the other, did you?

A We made it in -- we used it as our -- our basis and then we worked from there.

Q But you didn't use any part of this? Any part of those schedules? Originally mailed to me by the Revenue Office on September 18, 1972?

A Yes, we did. Because we had -- some of the schedules we used, we made revisions in them, but they were the schedules which were entered before.

Q Did you and I have a conversation in Mr. Brodsky's office one time several months ago, several weeks ago? Didn't you tell me that your schedule was new, you started from scratch?

A We --

Q Didn't you tell me that?

A Not completely no.

Q Not completely. What did you tell me?

A Okay, we used -- we -- most of our schedules, we started and made them and then compared them with the prior schedules, you know, so didn't -- to know which was -- and made any revisions on the old schedule which we had --

Q Didn't -- didn't you tell me that those schedules you submitted were entirely new and different from the ones that were already inserted on me -- or mailed to me?

A The bank deposit is -- the -- our analysis of the bank accounts is new. But the dividend schedule, the Schedule D schedule were prepared prior.

Q How about the major unexplained deposits, was that new too?

A The unexplained deposit schedules were new.

Q All new and in other words, let me understand you sir. Most of the stuff that you prepared and submitted to this Court were entirely new matter, new substance, is that a fact? Most of it?

A The unexplained deposit was new.

Q That's all I have of this witness, Judge.

THE COURT: Pardon?

MR. SILVERMAN: That's all I have of this witness.

THE COURT: Let me ask the witness. Is the Court's understanding correct that -- that you took the raw data that had been used before and -- and plus what additional data had been developed in the form of record of deposits and the like and -- and your work really was to prepare what amounted to a summary from that --

THE WITNESS: Right.

THE COURT: -- and that's the same information that was given --

THE WITNESS: Right.

THE COURT: -- to Mr. Silverman, is that right?

THE WITNESS: Right, the -- they were taken from the exhibits in a prior case.

THE COURT: Yeah.

MR. SILVERMAN: Mr. Wallace, the -- the new schedule you submitted with that summary was entirely new and fresh -- unexplained deposits and the bank deposits and the other items that you just testified a few moments ago. Isn't that a fact?

THE WITNESS: The unexplained deposit was based on the raw information from --

MR. SILVERMAN: Well a little while ago, you testified that there were new that doesn't do with the other.

THE COURT: I -- I asked him that question Mr. Silverman because words like new and beautiful and so forth and so on are subject to varying interpretations. Now, it's a new schedule, but --

MR. SILVERMAN: That's -- that's what I had in mind -- a new schedule --

THE COURT: -- it's not -- it's not a new -- it's not a new case or new information, it's based on the same information that's been around for a long time. And the same information that was given to you for verification.

MR. SILVERMAN: But Your Hönor, I was led to understand when I spoke to this witness at Mr. Brodsky's office that these new -- these schedules were from scratch, they had nothing to do with the -- with the --

THE COURT: Let's -- let's -- let's say that at least if they followed the -- the request of the Court, they re-evaluated these deposits and to the extent that there were some that could be accounted for in the interim, they took them off the unexplained list. Now, what you mean by a new schedule, I -- I don't know.

MR. SILVERMAN: What I mean --

THE COURT: This is an updated summary of -- of what has preceded it and in so, it reflects any further adjustments that the -- that the respondent may have been able to ascertain as a result and as a result of some conferences, although I understand very limited with you. Now, we're coming into the point now where it -- it's the Court's hope that we can work from this schedule and -- and to the extent that you're able to demonstrate further errors, why we'll make further adjustments and in order to facilitate that, I would ask the respondent whether or not Mr, Silverman has a new schedule breakdown of the unexplained deposits so that he can tell which ones are still unexplained.

MR. BRODSKY: I believe he does.

THE COURT: Now you -- do you know how for example, they --

MR. SILVERMAN: I have --

THE COURT: -- what the unexplained deposits of $29,325.44 in 1960 consisted of?

MR. SILVERMAN: Well they --

THE COURT: Item by item, I mean.

MR. SILVERMAN: -- they have -- item by item, I haven't got them, I've never been able to get them. But I can explain to the Court what they did. In due time, I'll explain it.

THE COURT: All right.

MR. SILVERMAN: Not at this time.

THE COURT: And if you don't have them, we --

we will -- we will see that you have them.

MR. SILVERMAN: Well --

THE COURT: Because I --

MR. SILVERMAN: -- I will explain the Court --

THE COURT: -- I don't know how you can explain what's unexplained until you know what's -- what's in the figures, so without having a breakdown of the unexplained, I agree, we can hardly ask you to explain something if --

MR. SILVERMAN: It cannot be explained, as --

THE COURT: If he can't -- if you can't identify it. So --

MR. BRODSKY: May I be heard, Your Honor?

THE COURT: Right.

MR. BRODSKY: At the last trial, we gave Mr. Silverman a breakdown of the deposits that remained unexplained --

THE COURT: Well, is this the same ones?

MR. SILVERMAN: These are the same figures --

THE COURT: Because the problem there is that this -- this witness apparently prepared a schedule after that session, isn't that right?

MR. SILVERMAN: That's right.

MR. BRODSKY: No, he didn't --

THE COURT: He didn't, so this is the same list that was given to Mr. Silverman before?

MR. BRODSKY: That's right, Your Honor the Exhibit 28-AB merely contains at the bottom of the original summary, the two additional concessions that I --

THE COURT: I see. Okay. And then at the time we provided Mr. Silverman with the original summary, he was provided with a breakdown, for example of the $29,325.44, is that right?

MR. BRODSKY: That's correct, Your Honor.

THE COURT: All right.

MR. SILVERMAN: That's all I want of this witness Judge.

THE COURT: Pardon?

MR. SILVERMAN: That's all I want of this witness now.

THE COURT: All right, you may step down.

(Witness Excused)

MR. SILVERMAN: May I have the second -- the second gentleman?

THE COURT: All right, we'll have the second gentleman.

MR.SILVERMAN: Please.

THE CLERK: You do solemnly swear the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. NEUTUCH: I do.

THE CLERK: Be seated and state your full name and address for the record.

MR. NEUTUCH: Harold Neutuch, 56 Helena Street, East Brunswick, New Jersey.

HAROLD NEUTUCH,

called as a witness, having been duly sworn, took the stand and testified as follows:

THE REPORTER: Spell your last name please.

MR. NEUTUCH: N-e-u-t-u-c-h.

DIRECT EXAMINATION

BY MR. KLETNICK:

Q What is your occupation?

A Internal Revenue Agent.

Q How long have you been an agent?

A Nine years.

Q Did there come a time when you examined Mr. Frank L. Silverman's Income Tax Returns for the years 1960 through 1965?

THE COURT: Let -- let's correct a little examine. It's my understanding that like preceding witness had only been witness (sic) for four years, he couldn't examine these returns in the sense of going out and making a Revenue Agent's Examination, could he, because this case has been pending that long.

MR. KLETNICK: He was not the original --

THE COURT: Well I mean he -- he -- he wasn't there-- the examination periods stops when you get in tis Court, don't you?

MR. KLETNICK: That's correct, Your Honor.

THE COURT: Okay, so the preceding witness could not have examined the returns because he wasn't even an agent when he got started, right?

MR. KLETNICK: Right.

THE COURT: Now, was this witness one of the agent's who examined the return, or are we talking about examining --

MR. KLETNICK: Did the supplemental audit.

THE COURT: He -- he came in supplementally and prepared some schedules, is that it?

MR. KLETNICK: That's correct.

THE COURT: Okay, thank you.

MR. KLETNICK: Did there come a time when you made a supplemental audit of Mr. Silverman's returns for the years '60 through '65?

A Yes, I reviewed the tax returns.

Q No further questions at this time.

THE COURT: All right, Mr. Silverman?

CROSS EXAMINATION

BY MR. SILVERMAN:

Q Mr. Neutuch, we had several conferences, you had some at my office, you had some at the office of Mr. Brodsky?

A Yes, we have.

Q And the last or the last two discussions we had at the office of Mr. Brodsky, did you tell me that these were new schedules prepared for the purpose of assisting the Court as well as me to identify each deposit, each item of money that the Commissioner claims is due?

A All these schedules are fresh new schedules, but some of the schedules are just updated schedules from the prior audit.

Q So you want us to believe that these new schedules are based on computations --

MR. KLETNICK: Objection, Your Honor, I --

THE COURT: Let -- let him ask the question first before you --

MR. SILVERMAN: -- I didn't finish the question. Now you want me to believe as -- and the Court -- I'm sorry, the Court first that these new schedules have something to do with the old schedules?

A Yes.

THE COURT: That -- that objection sustained. I don't know what you mean something to do, again --

MR. SILVERMAN: All right, then I'll rephrase my question, Judge.

THE COURT: As I -- let's find out whether they -- the respondent did what the Court I believe instructed them to do. I'm addressing myself to the witness. When you were assigned to this matter, where you had a partial record and a lot of schedules and a lot of raw data and -- and evidence of bank deposits and the like, is that correct?

THE WITNESS: Yes.

THE COURT: And I -- you -- with that information and the prior notice was made available to you and all, what -- what did you -- what was your job. What did your job entail?

THE WITNESS: Well, what we did was take the evidence, the documents, and from that piece them all together and come up with an end result. And we used the p ior Revenue Agent's Schedules as sort of a background, or a double check in a way. But we did take the original data and we used that to come up with our figures.

THE COURT: Now, did your job consist really of just -- just applying a summation from that data or were you required to make judgements?

THE WITNESS: We were not required to make judgements. We couldn't make judgements.

THE COURT: So it was really a mechanical job?

THE WITNESS: Yes.

THE COURT: Okay. Mr. Silverman?

MR. SILVERMAN: But you -- didn't -- the schedules submitted to the Court are -- are new schedules?

A If you want to use the word new, they are brand new, fresh schedules in our handwriting. But they were taken from the original documents.

Q Didn't you also shift expenses on the expenses that the taxpayer's entitled to? You allowed some, you disallowed some that were different than the original agent submitted?

A We never --

Q Now, answer the question please.

THE COURT: Well let -- let's put it this way. It doesn't make any difference what the original agent -- Was any adjustment made adverse to Mr. Silverman with respect to the disallowance of expenses from the 90 day letter?

THE WITNESS: No.

MR. SILVERMAN: Well, let me show -- let me show you --

THE COURT: You just show it when we come to it.

MR. SILVERMAN: Let me have the schedule of expenses please. I -- I don't want to go through with this.

THE COURT: The witness is --

MR. SILVERMAN: He said no, all right.

THE COURT: Well, we have expenses, 1960 per return $7,749.28 --

MR. SILVERMAN: Judge, I got it -- I got it.

THE COURT: -- we have corrected $4,039.18. Now --

MR. SILVERMAN: Yes, I got it.

THE COURT: -- what was the amount disallowed in the 90 day letter?

MR. SILVERMAN: I got it. Mr. Brodsky, I direct you now to the schedule of expenses to be produced for the Court so I can show the Court of this witness did not follow them, he gave -- he -- he put on new numbers, he disallowed most of the items of the original agent allowed me in my tax returns. I'll show you the comparison.

THE COURT: Let's not talk about the original agent. We have to talk about the 90 day letter because --

MR. SILVERMAN: 90 day letter, that's right. That's what I'm talking about, the 90 day -- it's entirely different.

THE COURT: Well that's a matter -- if that's true Mr. Silverman it'll be encumbent upon the Government to substantiate the excess and disallowance. So I wouldn't worry about it. If it's true, the figures will show it.

MR. SILVERMAN: Well they allowed less -- the -- the -- the -- that was -- they cut my allowances almost to a quarter of what the other -- of what the original agent in his assessment --

THE COURT: Well -- well if the --

MR. SILVERMAN: -- authorized.

THE COURT: -- if the 90 day -- the figure that the Government allowed you in the 90 day letter is going to be the figures that the Court's going to find unless the Government has some basis for taking -- on taking on the burden of proof and proving otherwise and they're not going to do that by schedule, so --

MR. SILVERMAN: The -- they increased it.

MR. BRODSKY: May I be heard, Your Honor?

MR. SILVERMAN: Judge, they increased it. They didn't reduce it.

THE COURT: Well, let me ask you. Did you adjust the expenses in this schedule?

MR. BRODSKY: Your Honor, the --

THE COURT: Adversely to the petition. Now that's a simple question, just answer first yes and no and then give me the bull. Did you adjust the expenses downward in the amount allowed?

MR. BRODSKY: The expenses were neither adjusted downward nor upward, they're identical --

THE COURT: From the 90 day letter?

MR. BRODSKY: -- they're identical as --

THE COURT: With the --

MR. BRODSKY: -- as our projection now stands
with the 90 day letter.

THE COURT: All right.

MR. SILVERMAN: Judge --

MR. BRODSKY: Your Honor, for reference purposes --

THE COURT: Now, let me say Mr. -- if Mr.
Silverman, if that answer is correct --

MR. SILVERMAN: Yes.

THE COURT: -- they -- there's no problem, right?

MR. SILVERMAN: The answer --

THE COURT: If that answer isn't correct, we'll
give you what's in the 90 day letter. So let's pass to the
next subject.

MR. SILVERMAN: The answer is not correct. I
am officer of this Court, I would not make such misrepresentations.

THE COURT: All right. We'll give you -- we'll
give you what's in the 90 day letter.

MR. SILVERMAN: I got to -- I got to -- and
I'll show it to you -- to Your Honor. How could they have
made such a statement to the Court. They didn't -- they
didn't reduce the -- substantially so.

THE COURT: All right.

MR. SILVERMAN: -- several thousand dollars for
every year.

THE COURT: All right. If that's true, we'll put it back in.

MR. SILVERMAN: That is true, as true as I sit and talk to you Judge. I wouldn't misrepresent to you.

THE COURT: Okay. Well there's no use in wasting anymore time on it. The Court is telling you that if what you say is correct and it -- it's just a matter of looking at some figures, you'll be given what's in the 90 day letter. So that's -- okay, let's move on from there then.

MR. SILVERMAN: Under the circumstances, in view of the difference of the large number -- large number of money involved in those five years of expense accounts, it -- it variance with the original ninety day notice, I move that this -- this present case be set aside and that if the Commissioner wants to send me a notice based upon those items, that if I will --

THE COURT: Mr. Silverman --

MR. SILVERMAN: -- let him follow Rule 7463.

THE COURT: -- I thought -- I thought I made it clear to you today that we're in the home stretch approaching the finish line and it -- it's going to be make or break this week, huh?

MR.SILVERMAN: I know, but --

THE COURT: So, you -- you've done very well at stretching this case out for --

MR. SILVERMAN: Judge --

THE COURT: -- a great number of years --

MR. SILVERMAN: -- Judge --

THE COURT: -- and --

MR. SILVERMAN: --I wasn't stretching it. Most of the -- most of the responsibility falls on the respondent --

THE COURT: -- and you know I --

MR. SILVERMAN: -- if they would have given me the information I wanted --

THE COURT: All right --

MR. SILVERMAN: -- this case would have been resolved two years ago. I agree with Your Honor.

THE COURT: That's right.

MR. SILVERMAN: They kept on playing games and wouldn't give me the information until Your Honor directed them to do it.

THE COURT: So we're going to wind everything up this week. So, are you finished --

MR. SILVERMAN: Judge --

THE COURT: -- finished with this witness?

MR. SILVERMAN: Well, I'm finished with this witness. He has --

THE COURT: Okay, you may step down.

(Witness Excused)

MR. SILVERMAN: -- he has told the Court that these are new schedules --

THE COURT: That's right.

MR. SILVERMAN: -- and these --

THE COURT: I -- I say this, if these schedules weren't revised schedules, Mr. Silverman, I'd jump all over the respondent because I don't want to go back and -- and, to a point where we don't reflect any education that we've achieved during the last four years. I want -- at least hope that those years some progress was made. So -- as I understand Exhibit 28-AD which is a new number for this schedule, that reflects all the progress to date.

MR. SILVERMAN: Judge --

THE COURT: And I would suggest this, Mr. Silverman, if you want, we can put you under oath and put you on the stand and actually, I'll permit you to testify from the table there and we'll just take these lines one by one, dividend income and so forth and go down the line and find out which ones you disagree with and why and that --

MR. SILVERMAN: -- Judge, I prepared a list of dividend receipts and where those dividends went to and I've got them here with me.

THE COURT: Well fine. Let's -- let's -- you want to be sworn now?

MR. SILVERMAN: Well, if Your Honor wants me to, I'll be sworn.

THE COURT: All right -- all right let' s--

MR. SILVERMAN: Anything I say is under -- is under oath.

THE COURT: No, no, get over here, we'll swear you in and we'll make you a witness.

MR. SILVERMAN: Very good.

THE COURT: We'll make you your own witness and I'll be your lawyer.

MR. SILVERMAN: It's a very fine lawyer, I've got. I've got my schedules, Judge -- I've got my --

THE COURT: Yeah, well, we'll have you sit down at the desk after your sworn in. Just stand up and be sworn.

MR. SILVERMAN: Okay.

THE CLERK: You do solemnly swear the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. SILVERMAN: I do.

THE CLERK: Will --

THE COURT: All right, now you may resume your seat at the counsel table Mr. Silverman. And --

FRANK L. SILVERMAN,

called as a witness, having been duly sworn, took the stand and testified as follows:

MR. SILVERMAN: Of course, Your Honor, I object to your ruling of the new schedules and their Rule 7463 wasn't complied with according to the Code and that under the circumstances, the Court should have vacated this here assessment or deficiency notice by the Commissioner if he sees fit to do so, send me a proper notice with the proper figures with the proper amounts involved in these cases.

THE COURT: That -- that would mean Mr. Silverman that if anytime a -- a -- a concession was made or a change made why the -- the respondent would have to send out a new notice and as I understand the law, respondent -- he can't send out another notice once he's in Court. All he can do is move to amend it. So this is the final and exclusive proceedings.

MR. SILVERMAN: They didn't move to amend it in this case.

THE COURT: That's -- well that's -- they maybe out of luck, see -- just sit -- if you want to sit down now, I'll give you a chance to go over these item by item and let's start out with 1960 in which you reported dividend income of $1,480.00, the respondent claims that you received $7,084.19. Now, do you know what the $7,084.19

consisted of?

DIRECT EXAMINATION

PRO SE

THE WITNESS: Well if they -- if they have their figures in the records. I haven't --

THE COURT: Well do we have -- would you have a schedule showing what the $7,000.00 is counsel?

MR. KLETNICK: We have a master schedule which is Exhibit 8-H which does all five years by company.

THE COURT: Yeah, 8-H. Let's see Exhibit 8-H here.

MR. KLETNICK: And that -- for -- if the Court pleases, that's further broken down by the subsequent schedules, 9-I and the following schedules.

THE COURT: All right.

MR. KLETNICK: Which shows each specific check for each --

THE COURT: Right.

MR. KLETNICK: -- corporation.

THE COURT: Now then Mr. Silverman, Exhibit 8-H --

THE WITNESS: 8-H, yeah.

THE COURT: -- shows the name of the company and the total amount of dividends which the respondent says they -- records show that you received for each of the years 1960 through 1965, then Exhibit 9-I shows the dates and the amounts of the deposits, is that it that represented those dividends, is that what we're talking about counsel?

MR. KLETNICK: No, these are just the dates of the -- of the checks.

THE COURT: The checks that--

MR. KLETNICK: Yeah --

THE COURT: -- were issued by the company, is that it?

MR. KLETNICK: That's correct.

THE COURT: And it also shows where the checks went over in the right column, isn't that right --

THE WITNESS: Uh --

THE COURT: -- it says deposited to and the name of the bank, right.

MR. KLETNICK: Right.

THE WITNESS: Before we do that, Judge, may I make an application to the Court again ?

THE COURT: Well, let's hear you Mr. Silverman.

THE WITNESS: I move that the -- the assessment, 1960 be barred from proceeding by the Commissioner on the grounds of statute of limitations.

THE COURT: Well, let's find out. The -- the Commissioner undoubtedly will urge that the omission of $54,000.00 in income is sufficient to show that there was more than just a mere accident inadvertence or lack of knowledge on your part The Court --

THE WITNESS: Judge --

THE COURT: -- the Court isn't deciding that -- whether or not the -- the omission was due to fraud yet, the Court is just trying to find out whether or not there was in fact an omission. Now, if you want to rest on the fact that there was an omission of $50,000.00 and -- but that doesn't prove fraud, you may do so.

THE WITNESS: -- Judge. That $54,000.00 that you're talking about is based upon a $16,725.00 that they conceded this morning, wasn't so.

THE COURT: Well, I don't see that here counsel.

THE WITNESS: It's on -- it's on the schedule that I received from --

THE COURT: Well, $1,125.00 is all --

THE WITNESS: Seventeen -- $16,125.00. They have -- they admit it in schedule 28-AB, this morning.

THE COURT: Well -- you mean for all years?

THE WITNESS: For 1960. We're talking about 1960 now.

THE COURT: 1960?

THE WITNESS: Yes sir.

THE COURT: The only thing I see is a reduction of $1,125.00 because of a difference in the basis of Cosden Petroleum.

THE WITNESS: But Cosden Petroleum was a deposit of seven -- $16,725.00 --

THE COURT: Yes.

THE WITNESS: -- they claimed is an unexplained deposit. I explained the deposit to them.

THE COURT: All right. Well -- well let's -- let's take --

THE WITNESS: That's $16,000.00 less. Now I've got something else --

THE COURT: -- let's -- let's take these up item by item Mr. Silverman. That's the only way we're ever going to make any progress.

THE WITNESS: Yes sir. And then again they have a --

THE COURT: So -- you -- you move that the Court decide that the -- the year assessment was barred on account of --

THE WITNESS: Statute of limitations.

THE COURT: -- yeah, statute of limitations and the Government relies on frauds. Now, before deciding the issue of fraud, we have to decide whether anything was admitted and what and why. And that's what I'm trying to do here.

THE WITNESS: All right.

THE COURT: So let's -- let's take up the difference in dividends --

THE WITNESS: So long as my motion is preserved --

THE COURT: Well that's --

THE WITNESS: -- I'm all right.

THE COURT: -- that's -- that's right. Exactly.

THE WITNESS: Now, I'll make a further motion Judge, before we go into another issue and then you -- the Court can do what it sees fit. Now, I have submitted this morning a letter, it's in evidence now, Petitioner's Exhibit 29.

THE COURT: Yes sir.

THE WITNESS: And that notice was mailed to me November 20, 1967. If Your Honor will look on the top of the page -- this is a photocopy, I have the original. If Your Honor wants the original --

THE COURT: No, that's all right. Right.

THE WITNESS: Now, since this letter was sent to me more than five years of the notice of assessment or the deficiency notice, of September 18, 1972, those cases, '61, '62, '63, '64, '65 are also barred by statute of limitations.

THE COURT: Well, that's a question the Court will have to decide.

THE WITNESS: The Commissioner knew well at that time that there was -- there was some taxes allegedly due and he failed to move after a lapse of more than five years.

THE COURT: Well, in the case of fraud, Mr. Silverman, it's the Court's understanding that the Commissioner can move at anytime. It could be ten years, fifteen years, and twenty years --

THE WITNESS: Not with the Commissioner having knowledge of the fact.

THE COURT: no, I --

THE WITNESS: Without knowledge, yes, Your Honor is a thousand percent --

THE COURT: I don't know -- I don't know that there's any knowledge test there at all because --

THE WITNESS: Well --

THE COURT: -- the procedure has been for many years I think it's changed recently, that where there's a possibility of a criminal prosecution, why the respondent does not proceed to send out -- to make an assessment pending a determination as to whether or not a taxpayer is going to be proscuted criminally. Now -- so that you have situations you -- the 90 day letter might not be sent out, particularly if the statute's run anyway, it doesn't make any difference. Once -- once the statute has run, whether it's run by one month or by one, doesn't make a bit of difference so, anyway. Your motion will be taken under consideration. If the years are barred in the absence of fraud, then of course in the absence of finding fraud here, your -- the decision will be entered for the petitioner. But again, before deciding whether there's fraud, the Court has to decide whether there's any omission of income and why that occurred, so I've been trying to get to that point.

THE WITNESS: Yeah. And also at this time, I'd like to move that the -- the tax return for the year 1966 be entered in evidence. I've spoken to Mr. Brodsky about that and he says he has no --

THE COURT: Well now what -- for what purpose is that --

THE WITNESS: The purpose is as follows Judge. The Commissioner shifted losses, profits not losses of the 1966 return to 1965.

THE COURT: All right, now that -- that return when we come to that year will be received for that purpose and it would certainly go to the question of fraud if not to the question of tax liabilities. So let's -- let's hold and when we get to that year, you can -- you may -- you may offer it again.

THE WITNESS: Thank you Judge.

THE COURT: So let's get back to the dividends for 1960 Mr. Silverman. You have a copy of 8-H, Exhibit 8-H has been supplied you and a copy of --

THE WITNESS: Yes, I have it someplace.

THE COURT: In other words, these are the only dividends that you admit having received?

THE WITNESS: Yes, Your Honor, I do.

THE COURT: And you have analyzed all of those and shown which accounts they went to?

THE WITNESS: I -- I have followed the checks, the back of the checks. You have -- have the checks attached to all the papers.

THE COURT: Yeah, well we'll recess here until one o'clock, give you a chance to mark all of these and have them marked for identification and then when we get back, why we'll -- we'll admit all of those for --

THE WITNESS: Before -- before we recess, may I suggest one more offer of evidence?

THE COURT: All right.

THE WITNESS: It will help the Court a great deal.

THE COURT: All right.

THE WITNESS: Mr. Brodsky, you don't object to this letter about Cosden Petroleum Corporation, tax excempt dividends? For the years involved here?

THE COURT: All right to the extent that they be tax excempt if they --

THE WITNESS: They're all tax excempt, I have documented proof.

THE COURT: All right. If so, why then --

THE WITNESS: I want to offer that --

THE COURT: -- yeah --

THE WITNESS: --after Mr. Brodsky looks at it.

MR. BRODSKY: No objection.

THE WITNESS: I want to offer that --

THE COURT: All right. Well put -- give those -- put those at the tailend of his -- of these schedules we're receiving so that we won't -- yeah, yeah -- we'll hold that and -- and we'll put that as the last exhibit after we get the breakdown on the dividend.

THE WITNESS: Right -- can I put my papers in your office?

THE COURT: Well, we'll -- we'll lock up when you leave, but you're going to be --

THE WITNESS: I can't "schlepp"that so much.

THE COURT: Pardon?

THE WITNESS:"schlepp"--carry that much.

THE COURT: Well that's all right, we lock the doors here -- first, I want you to remain with the Clerk --

THE WITNESS: Yes.

THE COURT: -- and get these all numbered.

THE WITNESS: Yes.

THE COURT: Well maybe, we ought to make it two o'clock then to get them out.

MR. BRODSKY: May I be heard, Your Honor.

THE COURT: Right.

MR. BRODSKY: We have a -- a rebuttal witness from Philadelphia dealing with the Atlas Credit Company stock which Mr. Silverman has raised to us in conference. He is a rebuttal witness. I was wondering if it's possible for Mr. Silverman if he intends to raise that issue, to raise it now so that we can put our rebuttal witness --

THE COURT: What -- what issue is that counsel?

THE WITNESS: A very serious one, they charged me with sales of stock that I never sold. With profits I never received, with money I never got. It's very serious.

THE COURT: This is -- this is the Atlas Credit?

THE WITNESS: Yes, Your Honor.

THE COURT: Well, we'lll -- we'll raise -- we'll take that up when we come to it. We're going to have to just go down this counsel, line by line because otherwise if we don't, we're never going to be able to unscramble this. So we'll come back in then at two o'clock.

THE CLERK: All rise.

(Recess)

AFTERNOON SESSION

THE CLERK: Be seated. Court is now in session.

THE COURT: Now, we've marked as exhibits, the remaining analyses of the dividends and the funds showing where the funds were deposited with the supporting data, offered by the petitioner which constitutes Exhibit #40 through 70 and --

THE WITNESS: 71.

THE COURT: No, 70 is the -- these will be admitted for the purposes stated, then we have as Exhibit 71, a letter from Moore, Schley, Cameron and Co. Brokers, setting forth the taxability of the preferred dividend of Crescent Petroleum which sets forth that during the years '60, '61 and '62, the dividends were non-taxable, I think there is also an official or semi-official publication that the respondent has that verifies this. And that will be received as Exhibit 71. Not that, I guess, takes care of the dividends Mr. Silverman?

THE WITNESS: Yes, Your Honor.

THE COURT: All right.

THE WITNESS: I'd like to recall the agent that testified this morning as --

THE COURT: Well if we're just going to testify as to whether these are new or old schedules --

THE WITNESS: Well, I have the old and the new schedule.

THE COURT: Well what -- what difference does that make?

THE WITNESS: Well he testified that these were schedules arrived from the first notice of assessment.

THE COURT: No, that's the information we have in the record. Now --

THE WITNESS: I'd like to offer these into evidence --

THE COURT: They're in evidence already.

THE WITNESS: Not this -- this is not in evidence, Your Honor.

THE COURT: Which -- what are you talking --

THE WITNESS: The old schedule that -- by which the assessment was based upon --

THE COURT: All right.

THE WITNESS: -- on which a notice I received.

THE COURT: All right, then let's -- let's identify that. That's Exhibit 72.

THE WITNESS: I only have one -- I'd like to make photocopies of it and submit the copies.

THE COURT: All right. You can withdraw it for that purpose.

THE WITNESS: It's the years '60, '61, '62, '63 and '64, '65.

THE COURT: Now, where did that schedule come from? What schedule is that?

THE WITNESS: This was a schedule submitted to me by Mr. Menillo. Now the schedule submitted to this Court --

THE COURT: Now wait a minute. Let's -- let's -- let's dispose of one thing at a time. Let's see that schedule. Now, it's your understanding that this schedule shows -- well, we're over on the business expense now, is that right?

THE WITNESS: Well, yes, that's where we are shown a difference that --

THE COURT: All right now, let's -- I wish Mr. -- Mr. Silverman that you would take 28-AD and we'll go right down 28-AD see, before we -- in the order that they are set forth there, that way, we won't be jumping back and forth. So --

THE WITNESS: You want to hold this in obeyance Judge?

THE COURT: We'll hold this in obeyance. Now, first, we've got everything in on the dividends and with respect to one stock there, I guess there's some item of controversy. Atlas Credit Co., was that the stock counsel?

THE WITNESS: '61 here, Judge.

THE COURT: Yeah, for '61.

THE COURT: All right, well now --

THE WITNESS: -- so the Court can understand --

THE COURT: -- I don't mean just talk about it, what -- what --

THE WITNESS: No, I want to point out to the Court what they did.

THE COURT: Well, all right, let's take 1960, $165.37. What's that all about?

THE WITNESS: Well they -- they gave me -- they charged me with a commission, but how about the monies that went into the bank to pay these premiums. That, they didn't give me credit for --

THE COURT: Well now -- what -- what --

THE WITNESS: -- they allowed several of thousands of dollars.

THE COURT: Did you receive a commission of $165.37 --

THE WITNESS: If they say so, I wouldn't argue with them.

THE COURT: All right. So you received the commission.

THE WITNESS: Well Judge --

THE COURT: Now you can prove you had expenses, but that's --

THE WITNESS: No, no, no. I had deposits of sums of money, this is only 10% of the premium of the original amount of premium. You follow me Judge? If they didn't include it in the schedule of deposits, they called it unexplained deposits.

THE COURT: Well, it -- when we get to the unexplained deposits, we can work on that. You -- you admit that you received a commission of $165.27?

THE WITNESS: I'll accept that figure,yes Judge.

THE COURT: Yeah. All right, 1970 -- '61. You admit you received a commissions of $257.34?

THE WITNESS: I'll accept that, yes.

THE COURT: That whole line --

THE WITNESS: Yes --

THE COURT: All right?

THE WITNESS: -- that whole line.

THE COURT: Okay, wages, is there any dispute as to the amounts there?

THE WITNESS: Well I received the wages, it went into the banks.

THE COURT: Okay, no dispute there.

THE WITNESS: No argument.

THE COURT: Professional income.

THE WITNESS: Well that's -- that's something I want -- I wanted to point out to the Court.

THE COURT: All right.

THE WITNESS: That they only charged my accounts with monies that was received by me as my fee. That monies that the clients got, they forgot about. That's --

THE COURT: Well --

THE WITNESS: -- that's the unexplained deposits. Those various lump sums of money.

THE COURT: Well, all right, but -- what records do you have?

THE WITNESS: I have checks, that I paid out. I have records. Sure I do.

THE COURT: Well let's start out --

THE WITNESS: I have -- I have judicial statements, closing statements, where money was accounted for -- these statements --

THE COURT: We have a schedule do we not showing the sixty-one -- seventy-thousand, one hundred and sixty-five dollars --

THE WITNESS: $70,000.00.

THE COURT: Well, the figure for '60 is not in dispute. '61 is the first one in dispute.

THE WITNESS: As to what Judge?

THE COURT: As to the amount?

THE WITNESS: The '60 in dispute too, Judge.

THE COURT: '60 is not. The amount shown in your return and the amount they show are the same.

THE WITNESS: Well then -- then that's out, there's no argument about that.

THE COURT: All right. Now in 1961, they show professional income of $8,137.98 per return.

THE WITNESS: Yes, but they failed to show --

THE COURT: They have charged you with $11,820.00. That's what you reported so that -- they -- that's your figure.

THE WITNESS: Yes.

THE COURT: They have charged you with $11,826.16. An additional $3,246.39. Now, do you know what the $11,216.00 (sic) consists of -- or put it shorter, what does the $3,246.39?

THE WITNESS: Those were monies paid to the clients out of the proceeds of settlement.

THE COURT: Your -- your -- you admit receiving that money, but you say --

THE WITNESS: I received the monies that were deposited in the bank.

THE COURT: And you deposited them in the bank?

THE WITNESS: Of which I paid out clients. It wasn't totally my money.

THE COURT: But you claim -- you claim that you paid this out?

THE WITNESS: Yes -- certainly I do. I did, I

THE COURT: Yeah, now do you have a schedule -- do you have a schedule showing those pay outs?

THE WITNESS: I have closing statements, Your Honor showing that the clients received the funds, they got closing statements as well. That will show that money paid out. I have checks, I also have escrow funds over here, I'll show Your Honor the checks, the cancelled checks.

THE COURT: No, no -- has the respondent seen this material?

THE WITNESS: I don't think they did, Judge.

THE COURT: Let me ask them. Have you seen this --

MR. KLETNICK: We've seen the -- the closing statements.

THE WITNESS: Did you see this?

MR. KLETNICK: Unless I see a specific check --

THE COURT: Well, let me ask you something counsel, there's no use in -- I don't care if it takes us until next year, you better get it into your mind that we're going to do this and we're going to do it right and we're not going to rely on -- on just throwing in everything and -- and putting the monkey on his back or anything else. If -- if he has a closing with a client, he either goes to jail or he paid the money out, doesn't he?

MR. KLETNICK: But we've accepted the figures on the closing statements. The closing statements were filed with the Appellate Division of the New York Court.

THE COURT: Well if the figures were -- if they gave you what's on the closing statements Mr. Silverman, what are we arguing about?

THE WITNESS: I'll tell you what we're arguing about.

THE COURT: Well, give me an example.

THE WITNESS: Well sure, yeah, all right. Fine. Here's a list of monies received -- charged to me in the settlement of cases.

THE COURT: The respondent's list?

THE WITNESS: The respondent's list, yes.

THE COURT: Okay.

THE WITNESS: I'm reading their list. Let's take number 16 of the closing statement as this --

THE COURT: Now what exhibit number are we reading from ?

THE WITNESS: I don't know what they numbered that, but I got -- I got their chart.

MR. BRODSKY: 20-T deals with closing statements.

THE COURT: 22?

THE WITNESS: 20-T.

MR. BRODSKY: 20-T.

THE WITNESS: I've got 20-T.

THE COURT: 20-T.

THE WITNESS: Yes.

THE COURT: All right. 20-T. Now suppose we take 20-T Mr. Silverman --

THE WITNESS: Yes sir.

THE COURT: -- and you tell us where in that --

THE WITNESS: Yes, number 16 --

THE COURT: Number 16 --

THE WITNESS: -- Vaszlavik is the name of the plaintiff.

THE REPORTER: Could you spell that please?

THE WITNESS: V-a-s-z-l-a-v-i-k.

THE COURT: All right.

THE WITNESS: The settlement in that case was I believe $500.00.

THE COURT: All right.

THE WITNESS: My fee net was $242.50. The client got $242.50. They have charged me with $257.50, that as the deposit of the case. They didn't charge the amount of $242.50 the client got. That's number one --

THE COURT: All right, they didn't include that in your income.

THE WITNESS: Well they charged me with unexplained deposits. There's a $242.50 deposit that didn't account for. That added up to thousands.

THE COURT: We're not talking -- let's -- let's -- when we get to the unexplained deposits, we'll take those up, but --

THE WITNESS: Well I think number --

THE COURT: Now, now -- in the professional income --

THE WITNESS: Yes sir.

THE COURT: -- and this is for the year 1961.

THE WITNESS: Sixty --

THE COURT: One.

THE WITNESS: -- one I think it is. Yeah, '61.

THE COURT: Are you saying that they charged you for $242.50 that the client got plus $257.50 that you got?

THE WITNESS: They charged me $257.50 and the client's fund $242.50, they didn't charge me. But they gave me credit later on, $15.00, which is $242.50 anyway. But the client's $242.50 , they didn't give me credit for out of deposit.

THE COURT: Well now, you're getting into the deposits, but how does that -- how does that -- how does that increase your professional income?

THE WITNESS: Well, they say unexplained deposit Judge.

THE COURT: No, the unexplained deposits and I think the respondent can answer this or will answer this if I'm -- the unexplained deposits do not include the $3,246.39 in professional income. That's not a part of the unexplained deposits.

THE WITNESS: They included it, Judge.

THE COURT: No, they're not.

THE WITNESS: From the figures they have submitted that I --

THE COURT: Let's start out this way.

THE WITNESS: Yes.

THE COURT: What they have done here Mr. Silverman, is that they have made a schedule --

THE WITNESS: Yes.

THE COURT: -- of your closing here and they -- and they -- they have taken them all and added them up, isn't that right?

MR. BRODSKY: May I be heard, Your Honor.

THE COURT: And they show item by item $11,421.67. So they -- they've put in $11,421.67, isn't that correct?

MR. BRODSKY: Your Honor, the unexplained deposits were reduced by the amount of the professional income that was traced --

THE COURT: Well let's not even confuse those now. We'll -- we'll take those up when we get to them. The -- the unexplained deposits we'll take up when we get to them. Now, as of right now, we're -- we're on professional fees and if you'll look at Exhibit 20-T, Mr. Silverman --

THE WITNESS: I'm looking at it Judge.

THE COURT: Huh?

THE WITNESS: I'm looking at it.

THE COURT: The total which -- which they have charged to you are the totals that appear in those columns. Aren't they, after taking out the client's funds and so forth? But before expenses, isn't that right? Isn't that what they're charging you with?

THE WITNESS: Yes, but that's not accurate.

THE COURT: Well now, to that extent, as far as reflecting your gross income from professional fees, that's right, isn't it. There can't be any question about that.

THE WITNESS: No, Your Honor. It's not quite -- I -- I'm --

THE COURT: Well, what's the question?

THE WITNESS: -- the next one let's take Cuozzi, as an example. I'll show you what I mean.

THE REPORTER: Can you spell that?

THE WITNESS: C-u-o-z-z-i.

THE COURT: All right. We -- this case was settled at $325.00.

THE COURT: Right.

THE WITNESS:The client got $150.00.

THE COURT: Right.

THE WITNESS: I got $150.00 too.

THE COURT: $150.00.

THE WITNESS: There was $25.00 adjustment which came off from the top. They charged me $175.00.

THE COURT: Right.

THE WITNESS: The $25.00 they did not do anything about. They just charged it to me. They added it on instead of subtracting it.

MR. KLETNICK: Your Honor, if the Court will look at Exhibit 19-S, which is --

THE WITNESS: 19-S.

MR. KLETNICK: -- we've kind of jumped ahead. 20-T really is in for the purposes of showing the expenses allowed.

THE COURT: All right. Number 19-S.

MR. KLETNICK: All right, if the Court will look at the second entry which is the Cuozzi account --

THE COURT: All right.

MR. KLETNICK: -- the Court will see that the gross receipt was $175.00 as Mr. Silverman said and that we had given him additional business expenses of $25.00 --

THE COURT: That's right.

MR. KLETNICK: -- and so we only charged him with $150.00.

THE COURT: ah I saw, at least under this category, all you're charging him with is -- is what he admits to receiving. Now where -- how does the difference come in between the return figure and this figure? I guess nobody knows, huh?

THE WITNESS: They -- they never gave me an answer. I asked that question.

THE COURT: Well I -- it doesn't make any difference in that Mr. Silverman -- take Exhibit 19-S and --

MR. KLETNICK: If the Court pleases, we'll lend Mr. Silverman our copy.

THE COURT: Yeah.

THE WITNESS: I've got it someplace there.

THE COURT: Now if you -- you've have Exhibit 19-S --

THE WITNESS: Yes, I have it someplace, I can't find it now. I got a copy.

THE COURT: Is -- are any of those figures of gross receipts in error?

THE WITNESS: Yes.

THE COURT: What -- which one?

THE WITNESS: The Trela against Kiely --

THE COURT: Now wait a minute -- which one is it?

THE WITNESS: One, two, three four, five, the sixth case from the top.

THE COURT: Trela, yeah I'm -- they --

THE WITNESS: Trela against --

THE COURT: Yeah.

THE REPORTER: Can you spell that?

THE WITNESS: T-r-e-l-a against Kiely, K-i-e-l-y.

THE COURT: They show you as having received a fee --

THE WITNESS: Uh -- six --

THE COURT: -- for your fee $3,476.50. And having expenses of $601.50.

THE WITNESS: Yes.

THE COURT: So that --

THE WITNESS: I retained counsel in this case and it shows on the closing statement what counsel received, my fee was not this -- what they say it was, it was much less. After deducting counsel's fee -- who represented these people. I was working for the city, I couldn't represent them at the time. I retained counsel on my behalf. The -- the Commissioner -- the respondent will submit the closing statement, it will reflect --

THE COURT: All right, do we have the closing statement there?

MR. BRODSKY: Yes, we do, Your Honor.

THE WITNESS: It's right there, Katz and Grable or Grable and Katz, whatever it was. $900.00, see it?

Grable and Katz. You aren't -- I told you about that. But this is $600.00 --

THE COURT: Well let me say this. That respondent's Exhibit 20-T has a footnote, $900.00 was paid to Grable and Katz and reflected in the form filed with F.L.Silverman's '61 return.

THE WITNESS: On my return, it shows it, yes. They never gave me credit on the schedule, Judge.

THE COURT: So why -- why shouldn't the petitioner have credit for the $900.00? Well we don't know --

MR. KLETNICK: It was deducted elsewhere as a --

THE COURT: -- yeah, but you disallowed another line, haven't you? Tell me where it is. And let me say this, that if -- if -- if the respondent is preparing a schedule showing the correct treatment of these items, whether he deducted it someplace else or not, we -- we're never going to get anywhere unless -- unless each one of these is -- the bottom line is the correct amount. Now you come here and you say no, the bottom line really isn't the correct amount, he had another $900.00, but since he deducted it someplace else, why, we didn't reflect it in our schedules. Now that -- that's going to necessitate that other items like that -- reworking the whole schedule.

THE WITNESS: I have one more Judge. $400.00 I paid out.

THE COURT: Well, wait a minute, let's -- let's -- let's get this one -- so the respondent concedes that Exhibit #21 , Trela shows another $900.00 was paid by the petitioner, but the respondent says that it was not reflected here because it had been deducted someplace else, is that right?

MR. KLETNICK: It was -- it was deducted on line four of Schedule C as a cost of labor.

THE WITNESS: Oh no, Judge. I -- it was reflected in the closing statement in judicial compass.

THE COURT: Well now wait a minute. He -- he's talking about your return.

THE WITNESS: But they --

THE COURT: Now, do you have a breakdown of that line C -- whatever it is and -- and how much you've allowed and how much you've disallowed because you've made disallowances?

THE WITNESS: They did, Judge -- they didn't allow this --

THE COURT: We've got to start out with the correct gross and then when we get down to the deductions, why we'll work on the deductions.

MR. BRODSKY: Your Honor, there's -- that is correct as to how he treated the -- the amount to the other attorneys and there's one other item in the agent's analysis, that was treated similarly and we'll inform the Court of that in one minute.

THE COURT: So that Trela should show $900.00 less, for '61, is that right?

THE WITNESS: That's right, Judge. Well, we'll skip one and go to the next one, Hajinsky.

THE COURT: All right, he said there's another one. Is Hadzinsky, the other one counsel?

THE WITNESS: H-a-d-z-i-n-s-k-y against Avenue B. That would be Broadway Transit Corporation.

THE COURT: That shows a recovery of $12,500.00, $9,500.00 paid to the client, $3,000.00 compensation to the -- to Mr. Silverman --

THE WITNESS: Less --

THE COURT: -- less $64.00 in expenses, is that it?

THE WITNESS: $1,200.00 of which was paid to Grable and Katz, as counsel.

THE COURT: How much -- how much?

THE WITNESS: $1,200.00 was paid to Grable and Katz of counsel.

THE COURT: All right, now --

THE WITNESS: The closing statement --

THE COURT: Now wait a minute, let me -- did you file out a form on that payment?

THE WITNESS: Yes, Your Honor, I did.

THE COURT: I see.

THE WITNESS: I -- eleven-ninety-nine.

THE COURT: All right, let me ask counsel for the respondent, what happened to the $1,200.00 there? To Grable and Katz?

MR. KLETNICK: It was -- it was on -- you're referring to the Trela Case?

THE WITNESS: No, Hadzinsky Case.

THE COURT: Huh? No, no, the Trela Case as I understand it, respondent admits that -- that Schedule 20-T, that's overstated by $900.00, but it's the position of the respondent that the $900.00 is being allowed as a cost someplace else. So we'll come to the cost later. We're -- now, we've got to -- we've got an adjustment of $900.00 on Schedule 20-T.

MR. BRODSKY: That's correct.

MR. KLETNICK: If Your Honor would look at page two, item number 42.

THE COURT: Of which? 20-T?

THE WITNESS: 19-S.

MR. KLETNICK: No, 20-T.

THE COURT: Right. Well before we get to page two --

MR. KLETNICK: This is going to explain the

$1,200.00.

THE COURT: All right. The $1,200.00 says New York Law. How does that explain the $1,200.00?

THE WITNESS: New York Law?

THE COURT: That has nothing to do with the case we're talking about. That's a recovery of $1,250.00. The -- the petitioner contends that in Exhibit 23, the closing statement in Hadzinsky, it shows that he paid $1,200.00 to co-counsel in that case out of the $3,000.00 that he received. Now --

MR . KLETNICK: Yeah well --

THE COURT: -- you can get the closing statement out and take a look at it.

MR. KLETNICK: Your Honor, the closing statement that the petitioner refers to -- I can offer it into evidence if the Court would like. It refers to --

THE COURT: It's in already, isn't it? Item 23?

MR. KLETNICK: The statement itself isn't -- the -- our summary of it is.

THE COURT: Oh, I see.

MR. KLETNICK: It -- it states relating to net fees, it states, Grable and Katz, Esquires, lists their address and it states fee in dispute not paid to date.

THE COURT: Now what's -- that --

THE WITNESS: Yes, so we settled that for $1,200.00 Judge. I could bring the file --

THE COURT: Now when -- when did you pay the $1,200.00?

THE WITNESS: The same year.

THE COURT: The same year?

THE WITNESS: See, I have -- I have the folder -- we went to --

THE COURT: Where's the folder?

THE WITNESS: I'll bring the folder tomorrow morning, if Your Honor wants it.

THE COURT: Okay, that item --

THE WITNESS: I have it.

THE COURT: -- well has the respondent seen it?

MR. BRODSKY: No --

THE WITNESS: No.

MR. BRODSKY: -- we've never seen any of this.

THE COURT: Well, you can't criticize the respondent for not giving you credit Mr. Silverman if he's never seen it, isn't that right?

THE WITNESS: That's right.

THE COURT: All right. Now, what other one do we have?

THE WITNESS: We have -- I'm looking for other cases -- how about the last one. You allowed me one-forty, six-ten, I paid to another counsel out of the $50.00 --

THE COURT: $150.00 --

THE WITNESS: Which is in the closing statement --

THE COURT: -- yeah.

THE WITNESS: -- I never got credit for it.

THE COURT: Well that again is in the expense column, I assume, is that --

THE WITNESS: No, no sir.The expense column --

THE COURT: -- well, I'm just asking counsel.

THE WITNESS: The expense column is one-forty-six-ten which --

THE COURT: No, I mean in his -- in his -- in other words -- the respondent's schedule shows that $150.00 of that fee was paid out to another attorney reflected in a W-2 form, filed with the return.

THE WITNESS: I did.

THE COURT: Now --

THE WITNESS: But they didn't give me credit on Schedule 19-S.

THE COURT: That's right.

THE WITNESS: Nylan -- N-y-l-a-n.

THE COURT: So that means that that one would -- would have to come out up there, then we'll take out -- take that other line of the return when the appropriate time. But if the petitioner shared a fee with -- with associate counsel in the case, or forwarding counsel or somebody, that wouldn't be a part of his income normally, would it counsel?

MR. BRODSKY: No, it wouldn't, Your Honor.

THE COURT: Okay, so let's assume that one's right. All right, what else we have Mr. Silverman?

THE WITNESS: I have an escrow deposit of $935.00 in the bank which I did not get credit for. I had these cancelled checks to prove it, Your Honor.

THE COURT: Now, what does that relate to?

THE WITNESS: That relates to unexplained deposits.

THE COURT: Well now, I mean -- I'm still talking about --

THE WITNESS: On the closing statements?

THE COURT: -- about 20-S.

THE WITNESS: All right.

THE COURT: Or 20-T, I mean. Exhibit 20-T. What else is wrong -- anything else -- any other questions you have with respect to Exhibit 20-T?

THE WITNESS: Bingham against Roman. I shared --

THE COURT: Now which -- which --

THE WITNESS: -- Bingham --

THE COURT: -- number is that?

THE WITNESS: -- 1961, we're in the same year. Bingham against Roman, I shared fee with counsel. As I explained --

THE COURT: That's Saparito Case -- no --

THE WITNESS: No, no, the Bingham.

THE COURT: -- well, what number is it there?

THE WITNESS: It's listed without numbers on 19-S.

THE COURT: All right.

THE WITNESS: Two-sixty-one.

THE COURT: 19-S. Exhibit 19-S. Bingham against Roman. They show you receiving $367.51.

THE WITNESS: And I shared it with --

THE COURT: 50 cents.

THE WITNESS: -- it was of counsel -- it was an attorney who assisted in that case. It's in the closing statements, it's reflected there.

THE COURT: Bingham. Well let's take a look at that closing statement. Do we have that one?

MR. BRODSKY: Closing statement indicates the word none for amounts --

THE WITNESS: Just a minute --

MR. BRODSKY: -- paid to attorneys participating in --

THE WITNESS: Let me see that --

THE COURT: All right.

MR. BRODSKY: -- compensation.

THE WITNESS: Other than my original objection to these schedules is that these agents did not give me credit for the total deposit for total recovery --

THE COURT: Well we get -- we get -- we'll get into the bank deposits -- unexplained deposits later.

THE WITNESS: Oh, very well.

THE COURT: Now, so that takes care of our --

THE WITNESS: Of this one.

THE COURT: -- of wages and professional income. Now, before we take up expenses, let -- let's skip the capital gains here because we have a witness here and apparently we have some dispute with respect to the capital gains.

MR. KLETNICK: Your Honor, may I be heard for one second on the professional income before we leave it?

THE COURT: Yeah.

MR. KLETNICK: I'd like to refer the Court to petitioner's 1961 return where he attaches to the return various copies of W-2 statements, one of which was for Grable and Katz in the amount of $2,100.00 which respondent allowed him credit for as -- as the cost of sales item that we have referred to on Schedule C.

THE COURT: I know but what I'm telling you counsel, we never -- and that goes perhaps to the fraud issue too, you can't come in here and say he understated his gross income by th[illegible] amount and then give it to him below the line, see. And you know that just as well as I do. If you want to argue that -- the merits and demerits of that, argue it someplace else. Or go take yourself an accounting course. All right, let's come to the next -- next item here. Capital gains.

THE WITNESS: In the meantime, I -- my -- that Your Honor said he wants to spend the continuing of these various schedules for the various years in question?

THE COURT: Did I want -- well -- capital gains, we're skipping one line here, we've got income, we've got expenses, but that's going to take a whole day, so I want to pass over the expenses -- because that -- actually until we get the income, there's no point in taking the expenses because apparently the respondent contends that some of these items of income has been allowed in the expense figure and since the respondent has taken the petitioner's figure and corrected it so that the respondent figure is -- purports to show the total amount that $900.00 for example has got to be in that -- for '61 has got to be in the seven thousand -- or eight thousand, five-eighty-nine-eighty-one. Wait -- correct it, $7,134.19. But I won't argue that now, we'll get to that when we -- when we come to it.

THE WITNESS: Also the $1,200.00 Judge.

THE COURT: Yeah, that's right. All right, now we've got Atlas Credit here --

THE WITNESS: You want to hear the witness?

THE COURT: -- the -- the -- Mr. -- Mr. Silverman first.

THE WITNESS: Yes.

THE COURT: The respondent has made an adjustment there with respect to your gain reported on the Atlas Credit. Is that correct?

THE WITNESS: The -- the respondent is charging me with profits of sales of stock of the Atlas Credit Corporation, yes.

THE COURT: I see.

THE WITNESS: I do not agree with them. I think they are faulty, I don't tink it's true --

THE COURT: Well, now, what -- where -- did you report anything on the Atlas Credit?

THE WITNESS: I haven't sold any, Judge. I've got the original certificates at the time I bought them until the present date.

THE COURT: All right --

THE WITNESS: So how could I sell

THE COURT: -- so it's your contention, you have not sold them?

THE WITNESS: I haven't sold anything.

THE COURT: Do you have the certificates with you?

THE WITNESS: I have the photocopies of the certificates, I have the list, I have the -- the registrar's statements.

THE COURT: All right, you have the registrar's statement, let's put that in the record.

THE WITNESS: I have it, yes. No, I'm going to put it in the record.

THE COURT: Huh -- I say --

THE WITNESS: Oh.

THE COURT: -- let's put that in the record right here.

MR. BRODSKY: I refer the Court to schedule 22-V --

THE COURT: I have it before me. Now while Mr. Silverman looks for his registrar's statement and it's the understanding of the Court that Mr. Silverman contends that he did not in fact make any sales of Atlas Credit stock in 1961 and he still owns such stock, let's find out why the respondent has included gains from those sales in Exhibit 22-V.

MR. BRODSKY: Your Honor, Mr. Silverman has a letter from the transfer agent which I'd like to explain with an agent from the bank --

THE WITNESS: I think the letter explains for itself --

THE COURT: How do you mean explain with an agent from the bank?

THE WITNESS: -- we don't have to have an explanation --

MR. BRODSKY: I -- I have --

THE COURT: What did the stock records show? Did the stock records show that Mr. Silverman made a sale?

MR. BRODSKY: May I call a witness to that affect, Your Honor.

THE COURT: Yeah, if he's -- if he's the custodian of the records.

MR. BRODSKY: I call Mr. Edward Mogee.

THE WITNESS: I thought -- I thought we were going to put the Atlas Stock in evidence.

THE COURT: We will, let's -- let's hear this too.

THE WITNESS: All right.

THE COURT: This goes to the same subject.

THE WITNESS: Okay.

THE CLERK: You do solemnly swear the testimony you are about to give to this Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. MOGEE: I do.

THE COURT: Well, does he have any confirmation slips or records to show it? I'm not going to accept his honest testimony without records, I can tell you that right now. So you can excuse him if --

MR. BRODSKY: He submitted information to us with regard to --

THE COURT: All right.

MR. BRODSKY: -- the A stock.

THE COURT: Okay.

THE CLERK: Raise your right hand. You do solemnly swear the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. JULIANO: I do.

THE CLERK: Be seated and state your full name and address for the record.

MR. JULIANO: Arnold M. Juliano, J-u-l-i-a-n-o, 491 Seaman's Neck Road, Seaford, New York.

ARNOLD M. JULIANO,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BRODSKY:

Q Mr. Juliano, what is your present occupation?

A The first assistant Inspector General for the office of Welfare Inspector General.

Q Did you ever work for the Internal Revenue Service?

A Yes, I did.

Q When did you work for the service?

A Approximately from 1961 to 1971.

Q What were your duties?

A I was a special agent.

Q In the course of your duties, did you at one time conduct an investigation of Mr. Frank L. Silverman, one of the petitioners in this case?

A Yes, I did.

THE COURT: Let's see what you have there counsel.

MR. BRODSKY: Do you recognize these documents Mr. Juliano, starting with this one?

A Yes, these appear to be -- these are copies of the ledger account of Frank L. Silverman from Banner Securities which I obtained from the Securities and Exchange Commission at 225 Broadway.

MR. SILVERMAN: I'm going to object to the introduction of these --

THE COURT: Well now, let's see --

MR. SILVERMAN: -- records into evidence.

THE COURT: Let's wait a minute, wait until they're offered here.

MR. BRODSKY: May I have this marked for identification please.

THE COURT: Let's mark that for identification counsel.

MR. BRODSKY: Do you identify this document, Mr. Juliano?

A Yes, this is a photocopy of a ledger account in the name of Frank L. Silverman from Burnham and Company and -- by arrangement with Zuckerman, Smith & Company, both brokerage firms appear on this brokerage stamp,

Q What is the period that this document covers?

A It looks like it covers January 3, 1961 to January 24, 1961.

Q And I ask that this be marked for identification. Do you recognize this document Mr. Juliano?

A Yes, this is another photocopy, same brokerage houses --

Q Which is what?

A Burnham and Company, by arrangement with Zuckerman, Smith & Company in the name of Frank L. Silverman. Now the period of time on this account appears to be January 30, 1961 through February 23, 1961.

Q I ask that this be marked for identification. Did you obtain these documents Mr. Juliano?

A Yes, I did.

Q Would you explain to the Court the circumstances --

THE COURT: Now wait a minute, before we get confused, are those documents, or are those supposed to be copies of documents?

MR. BRODSKY: Those are photocopies of original --

MR. SILVERMAN: I object --

THE COURT: All right, they're not documents then. Let's -- let's describe them properly. These are not documents, right. These are not original records, they are copies --

MR. BRODSKY: They are photocopies of originals.

MR. SILVERMAN: I am going to object to the --

THE COURT: Wait a minute -- wait a minute let's -- let's -- we haven't admitted them yet.

MR. BRODSKY: Would you explain how you obtained these records?

A The Banner Securities -- this is going back about 10 years, so to the best of my recollection -- Banner Securities I believe was put out of business by the Securities and Exchange Commission and I had traced what had happened to the Banner Securities Brokerage House to the Securities and Exchange Commission and then went over to the offices of the Securities and Exchange Commission at 225 Broadway and obtained the Banner Securities records. The Burnham and Company photocopies which I identified, I believe I made a personal visit to the brokerage house and served a subpoena for those records and I believe the -- those records were mailed to me probably a couple weeks after the service of the subpoena. That's to the best of my recollection, the way I obtained them.

Q Did you put any sort of an identification mark on these records when you obtained them?

A Yes. Behind the photocopy of the Banner Securities ledger sheets, I listed Banner Securities SEC, 225 Broadway and I -- and I signed the back of the photocopy. The back of the photocopy of the Burnham and Company ledger accounts bears the mailroom stamp, the date it was received in the Intelligence Division of the district office.

Q Your Honor, I move that these photocopies --

THE COURT: All right.

MR. BRODSKY: -- be admitted into evidence.

MR. SILVERMAN: I object to the introduction of these records, they are not originals, they are not made by anyone --

THE COURT: Let's take --

MR. SILVERMAN: -- at the place --

THE COURT: -- let's take a look at AC, for example, first. That's the Banner Securities.

MR. SILVERMAN: That was made outside of some office --

THE COURT: All right, let me ask you Mr. Silverman. Did you have an account with Banner Securities?

MR. SILVERMAN: I did.

THE COURT: You did.

MR. SILVERMAN: Sometime, way back.

THE COURT: And did you have an account there --

MR. SILVERMAN: In the fifty's.

THE COURT: -- in 1960?

MR. SILVERMAN: I don't recall the year, but way back in '58 was the first time that I had some business with them.

THE COURT: And -- and then did your business with them continue?

MR. SILVERMAN: No -- no sir, we -- I stopped because --

THE COURT: When did you stop?

MR. SILVERMAN: -- oh, a couple of years later -- maybe a year or two later.

THE COURT: Did you have business with them in '61?

MR. SILVERMAN: I don't recall, no sir. Don't recall.

THE COURT: Well if their records show you had business with them in '61 --

MR. SILVERMAN: I wouldn't give much authenticity to those records becau I understand later on, they were -- found a lot of illegal transactions --

THE COURT: Wait -- let me ask counsel for the respondent. Where are the originals of these, does respondent know?

MR. BRODSKY: They're unobtainable, Your Honor. I don't -- I think they've been destroyed.

THE COURT: Well, Court is not going to admit these because they are patently some erasures on here on the one. There's a pasting together which would indicate that this wasn't one page because it -- it isn't a question of being torn off. This is a composite of some type and without any opportunity to test it against the originals, it's clearly inadmissable.

MR. SILVERMAN: Thank you, Your Honor.

THE COURT: Now, let's get to Burnham and Company. Where are the originals of these counsel?

MR. BRODSKY: They're unobtainable, Your Honor.

THE COURT: Why?

MR. BRODSKY: I believe they're -- they destroyed these records --

THE COURT: Who made this copy, do you know?

MR. BRODSKY: Mr. Juliano, who made the copies that we have?

THE WITNESS: I believe the brokerage house.

THE COURT:) was sent to you in due course in the mail, is that right?

THE WITNESS: Yes, that's correct, Your Honor.

MR. SILVERMAN: I'm going to object to those too Judge. Because that Burnham and Company is still in business --

THE COURT: Well --

MR. SILVERMAN: -- and the best --

THE COURT: -- does counsel want to bring somebody in and testify that these records are no longer available?

MR. BRODSKY: Yes, I do, Your Honor.

THE COURT: And identify them as -- as appearing to be on their sheets, why then we'll -- we'll accept these. So these will be held -- the respondent's proffer in evidence will be held subject to further proof. Okay. Is that all we have?

MR. BRODSKY: I have no further questions of Mr. Juliano.

THE COURT: Do you have any questions of this witness?

CROSS EXAMINATION

BY MR. SILVERMAN:

Q Mr. Juliano, how did you obtain these records from Burnham and Company?

A I went down to Burnham and Company and served the subpoena for any accounts that you had with that brokerage house. As a matter of fact, if memory serves me correctly, and I think it does, Zuckerman and Smith was the brokerage house also. They're on -- Burnham and Company, I believe did the accounting work with Zuckerman and Smith and that's how they prepared a special ledger account that had both Burnham and Company, Zuckerman and Smith on it.

Q Mr. Juliano, did I have an official account with Burnham and Company to your knowledge?

A Offhand, I -- I don't --

Q No, no right now -- you say you're getting to recollect it better now, do you know why. Did I have an account with Burnham and Company?

A I don't recall whether I discovered that you had an account with Burnham and Company or my investigation disclosed that you had an account with Zuckerman and Smith and Company --

Q Now which --

A --which then led me when I tried to find where the records for Zuckerman and Smith were.

Q -- now which --

A It might have led me to Burnham and Company, you might --

Q -- which --

A -- have had them in both brokerage houses.

Q In which house did I have an account, Burnham and Company or Zuckerman and Smith and Company?

A You might have had them in both.

Q So you don't -- you don't know which one?

A My best recollection is that you had an account with Zuckerman and Smith and Burnham and Company did some of the record keeping for Zuckerman and Smith --

THE COURT: Well, I would say this counsel that -- that Burnham and Company is assuming full responsibility when they put out that kind of a statement. Now, I -- I don't know which accounts you had either and I don't know whether anybody knows which -- whether one took the other over. But according with those -- according to those statements, at least, Burnham and Company is taking responsibility for -- for the -- both of them are as a matter of fact. Now --

MR. SILVERMAN: Your Honor, I had no account with Burnham and Company.

THE COURT: Well, did you have any account with --

MR. SILVERMAN: I'll make it in open Court --

THE COURT: -- did you have any account with the other company?

MR. SILVERMAN: Zuckerman and Smith, yes.

THE COURT: All right.

MR. SILVERMAN: Not with Burnham and Company.

THE COURT: Well apparently, Zuckerman and Smith operated through Burnham and Company because when the stock -- when the stock records show the transfer of those shares out, they went to Burnham and Company, not to Zuckerman and Smith. When the statement comes out, it comes out with Burnham and Company on the top. Now, do you deny ever having received statements like this? Let's have your answer.

MR. SILVERMAN: I never --

THE COURT: Huh?

MR. SILVERMAN: I never dealt with Burnham --

THE COURT: Well I'm just asking you if you ever received that type of statement. Take a look at it.

MR. SILVERMAN: It's a long time ago Judge.

THE COURT: Huh? Well, I know, but you -- you've got a come and go memory here Mr. Silverman.

MR. SILVERMAN: No, no, I have a good memory --

THE COURT: That's right --

MR. SILVERMAN: -- I have a very good memory.

THE COURT: -- I said you have a come and go memory.

MR. BRODSKY: Your Honor, may I ask Mr. Juliano --

THE COURT: The only question bothers me counsel is that you brought a gentleman in here who said that the stock records right up to this date shows Mr. Silverman did not transfer these shares. Now, I'm -- I'm at somewhat of a loss as to interpret these Burnham statements in view of that testimony.

MR. BRODSKY: He made that statement with regard to the class A stock.

THE COURT: All right, I asked counsel if he was ready now to forget the class A and he said no, he was going to prove that there were sales, isn't that what you said?

MR. BRODSKY: I believe the photocopies which I just offered into evidence reflect sales of both class A and class B stock.

THE COURT: You mean these -- the Burnham ones?

MR. BRODSKY: That's correct, Your Honor.

THE COURT: Well let's see --

MR. SILVERMAN: Judge --

MR. BRODSKY: Your Honor --

MR. SILVERMAN: -- Judge, just a moment.

THE COURT: Wait a minute, let's -- let's -- let's see those two Mr. Clerk -- let's see these --

MR. SILVERMAN: Is -- is -- is --

THE COURT: -- these statements show --

MR. SILVERMAN: --- the statement deals only --

THE COURT: -- this is in account with Burnham and Company by arrangement with Zuckerman and Smith and Co. See? So Burnham and Co. was taking over Zuckerman & Smith's

THE COURT: you want -- if you want to go through those mechanics, we can, if not, maybe we ought to --

MR. SILVERMAN: -- there's no basis I never owned, according to these figures, 1948 shares, it got -- it's got sold in my account. The witness testified from the bank, only 1748 shares, there's something wrong over here.

THE COURT: No, that was A and B. He didn't -- he testified --

MR. SILVERMAN: I never sold one share of stock of the A, I've still got them, it was transferred for -- for the Sunasco stock --

THE COURT: All right.

MR. SILVERMAN: -- I've still got them, I never realized a nickel out of that stock, it was a total, complete loss.

THE COURT: Well, these show sales of 200 first, 1000, that's twelve-hundred --

MR. SILVERMAN: Yes, they all show --

THE COURT: 1000, that's thirteen-hundred (sic), 500 and -- no, it shows sales of 1748 class B stock.

MR. SILVERMAN: And also shows in '62 200, so it's 1948.

THE COURT: Well, '62 is class A.

MR. SILVERMAN: B.

THE COURT: No, class A is on the --

MR. SILVERMAN: It's got it right here as B Judge.

THE COURT: Well on the schedule I have on 22-V is class A.

MR. SILVERMAN: Your Honor, want to look at it please? B, it says. This is the statement given to me. From the same office, Mr. Brodsky will --

THE COURT: Now, that's the 90 day letter, is that -- is that the original Revenue Agent's -- huh?

MR. SILVERMAN: That's it, the 90 day letter, right.

THE COURT: Counsel?

MR. BRODSKY: May I see it please?

THE COURT: All right. This shows 200 B in 1962.

MR. SILVERMAN: It doesn't show A.

THE COURT: And it shows 100 A in 1961 and 1748 B in 1961. It's your -- it's your claim, I take it Mr. Silverman that you started out owning how many shares of class A?

MR. SILVERMAN: I bought, I think about 1300 and odd shares, I got stock dividends, that made a total of 1550 shares.

THE COURT: You had 1550 shared --

MR. SILVERMAN: At the time of surrendering to the other corporation stock.

THE COURT: You still had the 1550 shares?

MR. SILVERMAN: I did, I surrendered them to the Chase-Manhattan Bank and they issued to me the new certificates.

THE COURT: Well I would think counsel that that's something that's susceptible of getting an "imperical" answer to. Isn't it?

MR. SILVERMAN: I did not sell one share of stock, Your Honor.

THE COURT: If -- if -- if Mr. Silverman had still had the class A stock at the time of the merger, how could he have sold any?

MR. SILVERMAN: I still have --

MR. BRODSKY: Your Honor, I -- I believe he only sold part of his class A stock.

MR. SILVERMAN: I didn't sell one share of it.

THE COURT: Well I mean, but it would show, it's not a question of believing, it's that one record or the other -- your witness -- your witness testified that there was never any transfer of the class A stock, now that --

MR. BRODSKY: He -- he testified that his records show --

THE COURT: -- he didn't transfer any of it to Burnham and Company during any of these years. Now, I don't know how you can stand up here, this may be a mistake in these statements, but how can you say that he sold the class A. stock during this period when the stock transfer agent shows him owning the class A stock with no transfers right up to the date of the merger?

MR. SILVERMAN: Judge --

MR. BRODSKY: Your Honor, the -- it's possible that the class A sales were stock dividends that weren't reflected in my witnesses's records, I didn't --

THE COURT: No, you can't have --

MR. BRODSKY: -- I didn't get a chance --

THE COURT: -- a stock dividend that isn't going to be reflected in -- in -- in the -- in the -- in the registrar's book, can you. Because that's the final criteria as to whose the stockholder.

MR. BRODKSY: With regard to this document, Your Honor, this was never given to Mr. Silverman in connection with the civil case and I -- I believe it came from the criminal case, but I don't know.

THE COURT: Well, what difference does it make? That's -- that's -- somebody figured this differently, that time, didn't they?

MR. BRODSKY: Your Honor, I stand --

THE COURT: Is that the 90 day letter?

MR. BRODKSY: -- I -- I stand by the documents.

THE COURT: That isn't -- that isn't a part of the Revenue Agent's -- part of the 90 day letter?

MR. SILVERMAN: Yes sir.

MR. BRODSKY: No, it has nothing to do with the -- in this case.

THE COURT: All right. Now we're getting down to this mystery here of the Atlas Credit. What else do we have here? You'll have to get a little more testimony before you can get these records in.

MR. BRODSKY: May I ask Mr. Juliano a few more questions?

THE COURT: Because I don't -- I mean from somebody other than Mr. Juliano.

MR. BRODSKY: Yes.

THE COURT: Okay.

MR. BRODSKY: Mr. Juliano, would you explain how you obtained the document with -- concerning Banner Securities?

THE COURT: I'll tell you one thing, counsel --

MR. SILVERMAN: Judge, we went over that.

THE COURT: -- I don't care how he obtained it, as far as the Court's concerned, it's a doctored piece of paper. It has erasures on it and it's pasted together. So that it cannot be a true copy of anything. And as such, we're not going to receive it.

MR. BRODSKY: No further questions.

MR. SILVERMAN: Judge, in connection with --

THE COURT: And I might say off the record that I --

(Off the record)

MR. SILVERMAN: I'd like to offer this additional letter from Girard Bank, I couldn't find it before, now I have it.

THE COURT: Right.

MR. SILVERMAN: There's an original and a copy.

MR. BRODSKY: I have no further testimony at this time with regard to the Atlas stock.

THE COURT: All right, let's keep that document in for identification purposes, because I want to keep it as a part of the record here in case there's ever any question about it.

THE WITNESS: Your Honor, excuse me. May I just say something briefly? That photocopy of Banner Securities was made I believe by myself or someone from the SEC --

THE COURT: Well now, you don't --

THE WITNESS: -- and I absolutely did not --

THE COURT: -- you don't know what -- well do you --

THE WITNESS: -- when you say the Government, I'm assuming you're talking about --

THE COURT: I'm not accusing you of anything.

THE WITNESS: Oh.

THE COURT: I'm just saying that the document on its face cannot be a copy of anything because there's -- it's cut and pasted together and there are erasures on it. And you agree, you can read the erasures, can't you? You can -- can you -- give it to the witness and let him take a look at it and tell me whether or not you've got -- you've had a lot of experience in that area, whether or not that document doesn't have more than one page pasted on top of the other one, the first page, it can't be a cut off page because there -- the back -- the back of it extends the full length and then if you look at the last page and in another place there, there are two places where there very definitely are -- definitely something has been erased. Now whether that was erased on the original, on a copy, we don't know.

THE WITNESS: No, but I recall --

THE COURT: Well do you -- do you agree that the first page is a composite?

THE WITNESS: The first page is made up of three quarters of one piece of paper on the top and there was -- the bottom part over here apparently that it wasn't -- it didn't fit on the machine or something.

THE COURT: Is it not true that there's some numbers --

THE WITNESS: Yes.

THE COURT: -- underneath that were pasted over --

THE WITNESS: Yes, that's correct.

THE COURT: -- right and this is a pasted over composite of something --

THE WITNESS: Right, right.

THE COURT: -- right?

THE WITNESS: That's right.

THE COURT: Now let's take the last line on the second page, is it not correct that under the date of July 31st, there's an erasure there?

THE WITNESS: Yeah, there appears to be an erasure there, that's right.

THE COURT: All right. Let's take the last page and is it not true that on the item -- on the left hand column, there is an erasure there?

THE WITNESS: Yes, there appears to be.

THE COURT: Okay. So, that as far as the Court's concerned, this document is not entitled to any validity. Either as a copy or otherwise.

THE WITNESS: No, no, I just wanted to make it clear that that's how the documents were photographed --

THE COURT: I don't care how it was --

THE WITNESS: -- by myself and there were no erasures whatsoever were made by me. That was the only --

THE COURT: Well I -- I -- I'm not so sure that the erasion wasn't made after the photostat, but we don't need to argue that. The answer is that it can't be admissable in its present form --

THE WITNESS: Okay.

THE COURT: -- in identification.

THE WITNESS: Right.

THE CLERK: Your Honor, Petitioner's Exhibit 74 is marked for identification.

THE COURT: All right, counsel for the respondent, this will be received, this again is Mr. Mogee's confirmation that -- with respect to the Atlas A shares, he had said here any Atlas, he didn't -- he didn't even identify them, but it traces the fact that 155 shares of Atlas common stock, which I assume would be the A since you designate the other as B were held by Mr. Silverman, totalled 1555 shares, surrendered to the Chase Bank for Sunasco, total then was surrendered again for Commonwealth United, and then they passed through Scientific Resources and that during the period of 1958 through 1976, our record indicates that none of your shares were transferred out of your name except as indicated above. So I think the best evidence is the -- is the -- is the registrar's statement here in the absence of something showing something else, I don't know how we can say that Mr. Silverman sold any class A stock, now -- he may have sold some class B, but --

MR. BRODSKY: If Your Honor will bear with me for one minute.

THE COURT: Let me ask you Mr. Silverman, you didn't report any sales of stock, did you?

MR. SILVERMAN: I didn't sell any Judge.

THE COURT: What happened to your class B, then. You still got it?

MR. SILVERMAN: I never had any class B, Judge. I never bought class B. I accumulated some 1300 shares of class A. And the 1300 became 1550.

THE COURT: Well was this one of these situations that you got one with the other?

MR. SILVERMAN: No, I got stock dividends. I never --

THE COURT: Of class B?

MR. SILVERMAN: I don't know whether it was A or B, I never looked to be honest with you.

THE COURT: Well did you sell the stock dividends?

MR. SILVERMAN: But they were all surrendered at the time of the transfer of the -- of the merger. I never sold one share of stock, never received a dollar for it. I know what I sold, but I'll admit what I sold, in this Court. I'll admit I sold certain stocks I didn't report.

MR. BRODSKY: I have nothing further at this time.

THE COURT: All right, this witness will be excused. Now, is there anything -- any other adjustments here on the capital gains items that --

(Witness excused)

MR. SILVERMAN: Yes, Your Honor. United Airlines.

THE COURT: United Airlines. What year is that?

MR. SILVERMAN: I think I gave you my paper. There it is, I've got it. United Airlines, that's in 1960 --

THE COURT: All right, we'll recess until 4:00 here and change the tape. Then I'd like to go to about a quarter to five, is that all right?

MR. SILVERMAN: Yeah, that's all right, Judge. Anytime you want, it's all right.

THE COURT: Yeah, because we got to --

THE CLERK: All rise.

16 (Recess)

17 THE CLERK: Be seated, Court is now in session.

THE COURT: All right, Mr. Silverman, let's direct our attention to the --

MR. SILVERMAN: Before we --

THE COURT: -- 22-V.

MR. SILVERMAN: -- before we go any further, Judge, I'd like to make an application again. To recall one of the agents that was here - Mr. Neutuch.

THE COURT: Well what's -- what's the purpose of that Mr. Silverman?

MR. SILVERMAN: The purpose of showing the schedule that he prepared and the schedule that was submitted to me are in variance greatly and they're not --

THE COURT: Well let's -- let's just take the schedule that was submitted to you and mark it for identification here.

MR. SILVERMAN: Well I think I have it up -- I ended up -- here it is, I've got it. 21-U.

THE COURT: 21-U, is that the one that submitted to you?

MR. SILVERMAN: That's the one they submitted to me, yes.

THE COURT: I thought it was 22-V. What is --

MR. SILVERMAN: No, 21 -- 21-U. Business expenses, yes.

THE COURT: We're not on expenses yet Mr. Silverman --

MR. SILVERMAN: You want to leave it alone, okay. I'll leave it alone.

THE COURT: We're still on capital gains and losses.

MR. SILVERMAN: Well the reason -- the reason I'm doing this, I want it -- I want to see if I can save some time --

THE COURT: Well that's -- that's -- let's get the capital gains and losses --

MR. SILVERMAN: I want to renew my motion again.

THE COURT: What's that?

MR. SILVERMAN: My motion to -- to vacate or to dismiss the original assessment of deficiency as mailed to me by the office of the Commissioner on September 18, '72. Because these -- these schedules are new schedules, they are different schedules --

THE COURT: Well --

MR. SILVERMAN: -- they are entirely different, even with the capital gains, they're different as you pointed out to the witness over here. A little while ago.

THE COURT: If -- if -- if for example, Mr. Silverman, it should develop during the course of this trial that the -- that they are such differences, the respondent could if, if it became necessary, amend his answer to conform to the proof, so we might as well go ahead here --

MR. SILVERMAN: Judge --

THE COURT: -- and --

MR. SILVERMAN: -- I can't amend my complaint or my petition.

THE COURT: -- yes you can amend that too.

MR. SILVERMAN: It's a little too late to do it though at this stage of the game, different figures, different amounts, different schedules --

THE COURT: No, no -- I can assure you that we're not going to prejudice you in anyway there. Now this -- this schedule 22-V, you've had, that was -- it's the Court's understanding that that was supplied to you for the purpose of having you check the figures shown thereon and presumably give you access to the underlying data and -- so that you could determine in your mind whether or not these figures were correct. That's -- that's --

MR. SILVERMAN: Judge --

THE COURT: -- we're only going to charge you with the correct amounts. Now --

MR. SILVERMAN: -- Judge, bear with me please. 21-U was discussed in Mr. Brodsky's office, thus what our agent has found from the -- and we are bound by the agent's finding. That's the total conversation we had --

THE COURT: Well I don't what he --

THE REPORTER: Your Honor, can we go off the record one moment?

THE COURT: Let me see if I can find 21-U here. I don't know, I --

THE CLERK: Here's 21-U, Your Honor.

THE COURT: 21-U. 21-U -- it deals with expenses -- we're --

MR. SILVERMAN: Yes, Your Honor.

THE COURT: -- we're not on that yet. Let's -- let's get rid of schedule 22-V first.

MR. SILVERMAN: All right.

THE COURT: Do you have any further -- you've -- you've challenged the determination with respect to the class A stock on the basis that you never sold any class A stock?

MR. SILVERMAN: I have sold -- under oath.

THE COURT: And you've challenged the determination with respect to the class B stock on the grounds that you never owned any class B stock. Is that right?

MR. SILVERMAN: That's correct.

THE COURT: All right. Now those -- those two subjects -- I'm not so sure about your recollection because the -- the custodial or the custodian of the records of Atlas Credit Corp. shows you as having owned class B stock and it shows your address and all. Would somebody put stock in your name without telling you?

MR. SILVERMAN: I don't know, but I put the question to him, I served him the subpoena and I asked for the class A and class B stock, subpoena's in evidence and he gave me the stock that was listed in the company. The A stock.

THE COURT: Well he -- he said -- he explained at that time and we'll look at the subpoena, that at that time, they didn't have any record -- or they -- he didn't look in the proper place apparently to ascertain whether or not you had owned class B stock, but he has the records here, the respondent's have them in his custody for the purpose of making copies of the pertinent pages embodying your account and it's the Court's understanding that those records show you as the owner of class B stock.

MR. SILVERMAN: As late as February of this year, I paid a visit there, Your Honor --

THE COURT: Let me suggest this --

MR. SILVERMAN: -- and he gave me a letter of --

THE COURT: -- all right, he -- he -- he acknowledges that. And he also, when he was testifying attempted to explain why he did not pick you up as a owner of class B stock at that time. But the witness has testified that his records do in fact show you as an owner of class B stock. Those records are in the Courtroom, you can -- you can examine those records before the respondent sends them back to the Girard Trust and satisfy yourself that that's what the records show. Now maybe the records are in error, we don't know. But the records show you as the owner of class B stock, a statement in your name from Burnham and Company shows you -- shows that you sold class B stock, so either somebody was playing hanky panky with you, or -- or you owned class B stoc .

MR. SILVERMAN: Judge, I never received a nickel from any sale of any B stock or A stock --

THE COURT: Well maybe we can --

MR.SILVERMAN: I come back to the --

THE COURT: -- maybe we can trace the deposits, I don't know.

MR. SILVERMAN: Oh no, we traced every deposit, I went through it with a fine --

THE COURT: All right.

MR. SILVERMAN: -- large sums of money -- it's large sums of money, you don't hide, you don't put it under the mattress.

THE COURT: Well now --

MR. SILVERMAN: Like a $16,000.00 item, I immediately sold that -- I -- I knew where it came from or seventeen -- or a $2,000.00 or $3,000.00 item, I 'm not worried about where that money came from. I sold stock. And the agent gave me a list that I was able to check it back.

THE COURT: All right. Well anyway, class B stock is in issue. Class A stock as far as the Court would be inclined to rule at this time, is that there -- there can't be a sale of class A stock because the records of the corporation just don't show such a sale. Now maybe there was a sale of class B that was mistakenly listed as class A because the price was only a quarter of a cent more, so it could very well, 25 cents more, a quarter a point. So it could very well be that that was a mistake, we don't know. . If Burnham's records are admitted. But at least as to class A, the -- the records of the -- of the registrar shows that Mr. Silverman owned that stock at all times right up until the reorgnization and I -- I -- I think we're going to have to assume that those records are correct. But we can't say that one half is correct and the other half isn't,very well, Mr. Silverman. That's the problem we have with the registrar's records.

MR. SILVERMAN: I'm not asking the Court to -- to rule on one issue two different ways. I said that last time I spoke to the agents, I spoke to Mr. Brodsky, I never owned that stock, I never sold that stock, I never received any money for the stock. How could it be? Because the -- because the broker or the agent said so. Let him show me --

THE COURT: I --

MR. SILVERMAN: -- let him show me checks --

THE COURT: -- I would expect Mr. Silverman that what is listed as a sale of class A stock in 1961 was in fact a sale of class B stock.

MR. SILVERMAN: I never sold the A stock.

THE COURT: That's what I say. Now what is listed as a sale of class A stock in 1962 because of the price differential and all, would seemingly not be the same stock, but we'll -- we'll have to take the record as we find it, that's all. And I'll have to decide whether or not the records are sufficient or whether or not your testimony and you're under oath that you never owned class B, I'll accept that and that's it. Could you have had class B stock in your name belonging to somebody else?

MR. SILVERMAN: No sir. Absolutely not. I wouldn't lend money to anybody -- to any stock.

THE COURT: That's a great mystery.

MR. SILVERMAN: I don't understand this. It's a mystery to me.

THE COURT: All right.

MR. SILVERMAN: From the --

THE COURT: Other than the Atlas Credit --

MR. SILVERMAN: -- the A stock, I owned no other stock.

THE COURT: -- let me say this, that -- off the record.

(Off the Record)

THE COURT: With respect to the class B stock, the Government advises that it has actually copies of certificates which may have been endorsed by Mr. Silverman. And if we do of course, that would certainly take precedence over your memory, Mr. Silverman. We're -- we're talking about 18 years ago and we could be wrong. That's -- let's see what we have here. Mark them for identification.

THE CLERK: Yes, Your Honor.

THE COURT: This may have been one of those deals Mr. Silverman, where you bought one and you got the other as a bonus, you might say.

MR. SILVERMAN: No, no such a thing. They gave you a stock dividend two -- two shares and they gave you two cents in cash. I'll tell you the whole story about that. I had the stock, so I know.

THE CLERK: Your Honor, Respondent's Exhibit AF is marked for identification.

THE COURT: All right, Respondent's Exhibit AF shows shares of class B stock issued in the name of Mr. Silverman on -- on the back of the certificates, the trouble with -- we don't -- the fact that this was in the U.S. District Court isn't part of this exhibit, is it counsel?

MR. BRODSKY: No, Your Honor.

THE COURT: Don't give me anymore exhibits up here with these District Court tags on them because -- now, we have -- the first certificate, 500 shares is number B, 10,447, there's attached to that what purports to be the back of the certificate, the signature of Frank Silverman, Burnham and Company, Burnham's signature guaranteed by Burnham. Now let's -- let's separate these a minute. You got a letter opener there. Got a staple puller? This one -- this one here. All right. On the back of the certificate, we have attached a photostatic, a xerox copy presumably of the back of the certificate. Now the certificate is perforated -- did this certificate consist of two pages or one page counsel?

MR. BRODSKY: May I see it please?

THE COURT: Is this the front and back of one certificate?

MR. BRODSKY: This is -- this is the front and back of one certificate, that's correct.

THE COURT: All right, now let me ask counsel here, before I rule on this exhibit. If this certificate was perforated, the perforations on the back have to be the same as the perforations on the front, is that correct counsel? You can't cancel the back without cancelling the front, isn't that right?

MR. BRODSKY: That would by my understanding, Your Honor.

THE COURT: All right,will counsel take a look at certificate B, 10,447 and tell me whether the punching on the front conforms with the punching on the back? Now, it's impossible for that to be a back of that certificate, isn't that right?

MR. BRODSKY: I can't tell, Your Honor.

THE COURT: Well, you take another look. I'm waiting for an answer counsel. You've looked at it.

MR. BRODSKY: I really can't tell, Your Honor.

THE COURT: Well, we're going to sit here until you can tell because if you can't tell, you better go back to gradeschool or something of visual school, because it's perfectly obvious that the perforations cannot be made to match up, now if you want to separate the two and you can come up -- come up with any kind of a match of these performations, let's find out. And all the other certificates appear to be the same. So that --

MR. BRODSKY: Your Honor, I can only indicate to the Court that these are the documents which I obtained from the U.S. Attorney's Office --

THE COURT: Well, I'll indicate to the respondent, that the Court is prepared to find that these documents are fabricated and I don't think there's any question in the world about it. And if you can bring somebody in here that can show differently, I'd be glad to hear the testimony, but I don't know how you can perforate a front of a page and not have the perforation show up on the back of the page. And that's what these certificates appear to be. And it would appear to the Court that they may have taken some signatures off of one certificate and tacked it on this one. But at least, the backs do not correspond to the fronts. Now isn't that true?

MR. BRODSKY: I would have to take the document apart and compare it, Your Honor.

THE COURT: Well, take it apart, see if it will fit. If you can fit it, good. But there actually are more perforations on the back then there are on the front in some of these. And there's a cancellation on the back and it doesn't appear on the front, which is the important part because these certificates were never cancelled as such on the front. You can't match them because they're different. They have different lettering on them. I don't know how that came about, but having defended cases, I'm naturally distressful over a lot of this evidence. This is pre-Watergate, you know, anything went.

MR. BRODSKY: Your Honor, may I offer a --

THE COURT: Don't -- don't mix them up, you -- what do you want to offer now?

MR. BRODSKY: Another letter from Mr. Mogee. Which -- which summarizes --

THE COURT: Well let's -- let's -- let's get all of these certificates first. You're offering these certificates to show that Mr. Silverman sold class B stock. And these certificates don't show that he sold any class B stock, that I can see. There's a cancelled on a -- on a lot of them that doesn't appear on -- on the -- on one that it does on the other and there's just -- now I didn't -- from the visual examination, by the Court, the backs just don't match up with the fronts.

MR. BRODSKY: Would Your Honor accept the fronts only of these --

THE COURT: No, they don't prove anything. They don't show he sold anything. There's no signature on them.

MR. BRODSKY: They show he at one time --

THE COURT: No, that doesn't necessarily even mean that he -- he knew he had it. The fronts show nothing.

MR. BRODSKY: We -- we withdraw the offer of these photocopies.

THE COURT: All right, that -- that will be granted. Offer to withdraw will be granted. We better keep them for identification, just in case we get any question on this. So let's leave it in for identification here.

MR. BRODSKY: I -- I offer at this time a letter from Mr. Mogee to Mr. Juliano which summarizes Mr. Silverman's --

THE COURT: All right, let's get a number on that and show that to Mr. Silverman here.

MR. BRODSKY: -- which summarizes Mr. Silverman's

B common stock holdings and the date of cancellation of --

THE COURT: It summarizes what the records show. With respect -- under the name of Frank L. Silverman, right?

MR. SILVERMAN. I'm going to object to that, Your Honor.

THE COURT: Well, you can't object to that without -- you've offered the same thing, haven't you?

MR. SILVERMAN, Yes, I could -- the witness was here, he could have asked him the question. I asked the question and he acknowledged the letter, that's why I offered that letter to --

THE COURT: Let's --

MR. SILVERMAN: -- pursuant to the testimony, I can't cross-examine him.

THE COURT: -- let's get it marked -- let's get it marked here and --

MR. SILVERMAN: I can't cross-examine him, Judge.

THE COURT: -- well, we'll bring him back if necessary.

MR. SILVERMAN: All right, I'm going to object to the introduction of this letter. What's it summarize? It's not binding upon me what it summarizes. I can't ask any questions on the letter, Judge.

THE COURT: Well, now wait a minute, wait a minute, let me see the -- let me see the letter.

THE CLERK: Your Honor, respondent's Exhibit AG marked for identification.

THE COURT: All right.

MR. SILVERMAN: AG?

THE CLERK: AG.

MR. SILVERMAN: Thank you.

THE COURT: Now then, he says, "we list below the B common stock held by the subject individual." And it shows the shares and it shows Edward Mogee, Assistant Trust Officer. Mr. Mogee testified here and -- does this counsel show anymore than the records you have there before you that you're going to put into evidence?

MR. BRODSKY: No, it doesn't, Your Honor.

THE COURT: Well then it -- the -- does the record serve any useful purpose? What -- what does the letter prove?

MR. BRODSKY: Nothing beyond Mr. Mogee's testimony, Your Honor.

THE COURT: No, that's right. So I -- Mr. Silverman, it would be my inclination to admit it as a summary subject to your right to check it out. But if you want to make the job harder, I'll just have to exclude it. But the record -- this -- this record that this letter sets forth is in evidence now.

MR. SILVERMAN: I don't want to make it harder for the Court.

THE COURT: All right, we'll receive it subject to your right to check it that it is what the records, do in fact, show.

MR. SILVERMAN: I don't want to make it harder for the Court. I want to make it as easy as I can for myself and for all concerned.

THE COURT: That's right. Well it's easier for you too. That just shows that there were certificates in your name and they were cancelled. Now, you claim you never owned them.

MR. SILVERMAN: Judge, I don't want to make it hard for anybody, including myself. I don't feel too good now.

THE COURT: All right, okay. But you better go think some more about this Burnham, whatever the outfit was that counts -- that's -- all right, what do we have next? Atlas Credit. Do you have any other stock sales on here --

MR. SILVERMAN: Yes.

THE COURT: All right, what's the next one that you --

MR. SILVERMAN: United Airlines, Judge.

THE COURT: United Airlines and what year was that?

MR. SILVERMAN: That was in nineteen-sixty --

THE COURT: Five.

MR. SILVERMAN: -- five, yes sir.

THE COURT: Yeah, all right. In 1965, the -- the exhibit shows that you acquired in '59 --

MR. SILVERMAN: Capital Airlines --

THE COURT: -- some United Airlines -- Capital --

MR. SILVERMAN: -- no, Capital Airlines, I never bought United Airlines.

THE COURT: -- you bought Capital Airlines --

MR. SILVERMAN: And in exchange for the Capital Airlines stock, they gave me 30 shares of common stock and 44 and 1/10th share of United Airlines warrants.

THE COURT: -- warrants. And what were those warrants for?

MR. SILVERMAN: To buy it --

THE COURT: Common stock.

MR. SILVERMAN: -- United Airlines stock at a certain price.

THE COURT: All right.

MR. SILVERMAN: I believe it was around $38.00.

THE COURT: And you got --

MR. SILVERMAN: I sold those warrants and received the sum of twenty-one-seventy-seven-o-seven. That's agreed.

THE COURT: All right, that's agreed.

MR. SILVERMAN. Yes, but I did not realize a profit of one penny because I sold those warrants at a reduction of the original costs for Capital Airlines stock. I have figured that out with these gentlemen, and they said they can't make a ruling on it, it's for the Court.

THE COURT: Well now, what -- this is a question of law we have here counsel?

MR. SILVERMAN: A question of law, yes. I said the reduction of capital is not a sale or transfer of an asset --

THE COURT: Well now,wait a minute. What happened to your Capital Airlines stock? Do you still have it?

MR. SILVERMAN: No, they took -- United Airlines took over the -- Capital Airlines.

THE COURT: All right, well do -- what about the United Airlines stock -- did you --

MR. SILVERMAN: The United Airlines stock I sold thisyear, the 30 shares.

THE COURT: All right now --

MR. SILVERMAN: Now, I'm -- I'm going to allocate the cost price of the warrants that I received when I sold them in '65 plus for the 30 shares I sold --

THE COURT: No, when you got the stock plus the warrants, the warrants had a value, isn't that right?

MR. SILVERMAN: The warrants had a value, yes sir.

THE COURT: And the stock had a value?

MR. SILVERMAN: No, the stock -- the stock, yes.

THE COURT: Right, so --

MR. SILVERMAN: But the total sum was a loss, a tremendous loss.

THE COURT: Well -- well apparently that was a tax free transaction, is that --

MR. SILVERMAN: Yes sir, it was --

THE COURT: -- the respondent --

MR. SILVERMAN: -- tax free transaction.

THE COURT: -- all right, but in allocating your costs, you have to take the relative values of what you receive to the percent of the total value --

MR. SILVERMAN: And reduce the cost of the stock. That's what I did.

THE COURT: -- and apply -- no, you apply a part to the warrants and a part to the stock.

MR. SILVERMAN: I had a different idea, Judge.

THE COURT: You can't recover 100% on one --

MR. SILVERMAN: I thought I could reduce my initial cost for the stock --

THE COURT: By the full amount of the warrants?

MR. SILVERMAN: By taking the --

THE COURT: Well then -- that -- you're wrong as a matter of law --

MR. SILVERMAN: Well if I'm wrong, I'm wrong. I put up to the Court.

THE COURT: Okay, that -- that adjustment then. Now, what else do we have on the capital gains schedule?

MR. SILVERMAN: Well, they allocated -- they allocated certain cost price for Braniff Airline, that was sold too.

THE COURT: Braniff Airways.

MR. SILVERMAN: Braniff Airways.

THE COURT: Yeah. 500 shares you sold.

MR. SILVERMAN: Yes, I did. I didn't sell it, I surrendered it to the company.

THE COURT: For what?

MR. SILVERMAN: On offer, a surrender offer.

THE COURT: Well that's selling it, you --

MR. SILVERMAN: That's selling -- I sold it, yes.

THE COURT: -- sold it to the company.

MR. SILVERMAN: I did.

THE COURT: They bought back their own stock?

MR. SILVERMAN: Yes, they bought it back and they paid $75.00 a share.

THE COURT: You had 500 shares and --

MR. SILVERMAN: I received $37,500.00.

THE COURT: All right now --

MR. SILVERMAN: The only questionable --

THE COURT: -- how -- where -- where's the cost? Is the fifty-five-twelve-o-five --

MR. SILVERMAN: It costs more than that --

THE COURT: Right.

MR. SILVERMAN: -- I got -- I got purchase slips.

THE COURT: All right, have you got the purchase slips?

MR. SILVERMAN: Yes, sure I have.

THE COURT: All right, well let's -- let's have the purchase slips then.

MR. SILVERMAN: Yes, I have.

THE COURT: Let me ask respondent, on this adjustment for United --

MR. SILVERMAN: Yes.

THE COURT: -- did you -- did you check that capital exchanges listed that they have -

MR. BRODKSY: Yes, we did, Your Honor --

THE COURT: -- that's the basis you gave --

MR. BRODSKY: -- that's the basis for the adjustments.

THE COURT: -- yeah, right, okay. Fine.

MR. SILVERMAN: Well we -- I checked it out with these gentlemen and they -- I told them about it and they -- I gave them photocopies of all the papers.

THE COURT: All right. Okay, so now we got Braniff. Let me ask the respondent, while Mr. Silverman is looking for his purchase records. Does the respondent have the broker's statement showing the purchase of these --

MR. BRODSKY: Yes, we do, Your Honor.

THE COURT: Let's see that and that will show what it is, Mr. Silverman.

MR. BRODSKY: We're -- we're getting them out right now, Your Honor.

THE COURT: Yeah. See, Burnham and Company went under didn't they?

MR. SILVERMAN: No, they're in business. Zuckerman and Smith, I don't know.

THE COURT: I think maybe the respondent ought to get the originals of those stock certificates if they're available. Because I tell you that -- that -- if -- if what I see there is -- is a proper interpretation is -- it disturbs me very much.

MR. KLETNICK: Your Honor, It may well be --

THE COURT: I -- I've got one of your art committee now that I want to report on that got up here on that Gilbert

Case you know and he -- if he didn't testify falsely and defraud the company on the sale of that Monet, I'll be very much surprised and I'm waiting to hear what happens on that. Just because the case has been decided, you might tell your people, I don't intend to let that matter drop.

MR. KLETNICK: Your Honor, this won't be a matter, we didn't do the xeroxing.

THE COURT: I'm not saying you did it --

MR. KLETNICK: And --

THE COURT: -- no, no, but I'm just saying --

MR. KLETNICK: -- it may well be that there was --

THE COURT: -- you can't have a perforation that doesn't go through a sheet of paper.

MR. KLETNICK: -- we're just saying it may well be that if you took all the different stock certificates --

THE COURT: That may be, but I think the answer --

MR. KLETNICK: -- and exchanged the backs --

THE COURT: -- to that is we better get the originals and -- then -- then there can be no dispute and Mr. Silverman can look at his signature and if that's his signature, if he doesn't believe it, we'll get a handwriting expert to identify it.

MR. SILVERMAN: Judge, I can't find it now.

THE COURT: All right, well the respondent has a broker's statement they claim that will show this is your costs.

MR. SILVERMAN: Well, I'd like to see it. I can't go no more, Judge.

THE COURT: Let's see, you got these in '56, '56 and '58, I believe.

MR. SILVERMAN: I can't do no more, Judge. I'm all popped.

THE COURT: Well it doesn't -- well, let's see. 911, I guess that goes with these.

MR. SILVERMAN: I'm all popped to poop. I had them -- I had them all prepared for the Court.

MR. KLETNICK: Your Honor while there seems to be a pause here, respondent has a witness that's going to testify concerning some form 872 consents with respect to the year 1960. Which --

THE COURT: Well, we'll get -- do you want to put those in now under the statute of limitations?

MR. KLETNICK: Yeah, there -- as I understand them, Mr. Silverman disputes the authenticity of one of these.

THE COURT: Let -- let's see -- let's see these statements. It's -- it's your contention that you didn't sign these statements Mr. Silverman?

MR. SILVERMAN: Oh, no, I wouldn't say that. I signed some of them. I signed some of them.

THE COURT: Well I mean -- well take -- let's mark these for identificati as respondent's next number here.

MR. SILVERMAN: Judge, what I signed was blank sheets of paper --

THE COURT: Well that -- that doesn't make any difference. You're telling -- you're saying that you signed these in blank --

MR. SILVERMAN: Blank.

THE COURT: -- and the agent's filled in the years?

MR. SILVERMAN: Yes.

THE COURT: All right, well what's wrong with that?

MR. SILVERMAN: A lot of things wrong with it.

THE COURT: What?

MR. SILVERMAN: I don't know what years they put in there at the time.

THE COURT: I would say if you signed them in blank, you signed them with the intention that he fill them out, did he not -- did you not? All right, Respondent's Exhibit AH. I'll ask the petitioner whether or not these are in fact his signatures, his handwriting. Now is it your contention that you signed those in blank, Mr. Silverman?

MR. SILVERMAN: That's my statement, I signed them in blank.

THE COURT: What you received copies of them at the time, did you not?

MR. SILVERMAN: I received some copies, yes.

THE COURT: That's right. Okay.

MR. SILVERMAN: It's also my contention -- I think that this Court that this -- this -- this paper 6-30-66 was never signed by me and it's signed over here.

THE COURT: You mean the copies were not signed by you?

MR. SILVERMAN: No --

THE COURT: Well that's that's -- .

MR. SILVERMAN: -- I signed the other copies. All the others. May I approach the bench and show it to you?

THE COURT: Well is that your signature on it?

MR. SILVERMAN: Well, it looks like my signature, yes.

THE COURT: Okay.

MR. SILVERMAN: I said to the Court, I'm not going to make any mis-statements to this Court no matter what the cost is.

THE COURT: All right, well then -- but it's -- you're saying that you signed them in blank and that the examining agent filled in the years, is that what -- is that your --

MR. SILVERMAN: In fact, it's not in my handwriting. You can see --

THE COURT: I -- I mean it's --

MR. SILVERMAN: -- it's quite apparent.

THE COURT: -- they usually are filled in on the typewriter.

MR. SILVERMAN: And my name -- my name wasn't even filled in either, it's all done somewheres -- there, Frank Silverman, my name isn't even properly --

THE COURT: You filled them in first, you signed a bunch of those blank --

MR. SILVERMAN: I signed the blank papers.

THE COURT: All right.

MR. SILVERMAN: I did.

THE COURT: Okay, let's hold that for identification and the respondent will put on some testimony in regards to that.

MR. SILVERMAN: May I approach the bench and show it to you?

THE COURT: Huh?

MR. SILVERMAN: Can I approach the bench and show it to you?

THE COURT: Well -- well we'll -- we'll have some testimony -- I might say, Mr. Silverman if you -- even if you are right and you signed them in blank and they're examining certain year and that's for the purpose of extending the statute, I -- I don't think you can come in afterwards and say --

MR. SILVERMAN: Well the agent told me he wants to look at the -- at the return for no other reason --

THE COURT: Well, that's right.

MR. SILVERMAN: -- that's why he wanted me to sign those papers and I signed them, in blank. He gave me a paper and signed them. What he did with them after, I don't know.

THE COURT: Now, did the statute run at the time these were signed counsel?

MR. SILVERMAN: After -- I think they were running inspite of the extensions. They run --

THE COURT: No, I mean, are these extensions given after the statute has run?

MR. SILVERMAN: Yeah.

MR. KLETNICK: I believe, Your Honor, the --

MR. SILVERMAN: The statute had run already, sure.

MR. KLETNICK: -- no.

MR. SILVERMAN: Yes, don't tell me no. As early as 1-66. '65, is the earliest one. Look at your papers, you'll see it.

MR. KLETNICK: There's one, April 3, 1974 -- '64, April 13th, 1964.

MR. SILVERMAN: The first --

THE COURT: And that applies to what year?

MR. KLETNICK: 1960.

MR. SILVERMAN: '60.

MR. KLETNICK: Which was filed in '61, runs in '64.

THE COURT: Yeah, well -- no that would be about right. All right. We'll have testimony on those Mr. Silverman. We haven't been able to find the costs on the --

MR. SILVERMAN: I -- I can't -- I can't find it, no --

THE COURT: Well let's recess until --

MR. SILVERMAN: -- I'll -- I'll find it -- I'll find it.

THE COURT: -- and let -- look for that over night --

MR. SILVERMAN: Judge --

THE COURT: -- and --

MR. SILVERMAN: -- can you put this over for Wednesday please?

THE COURT: -- no, we can't --

MR. SILVERMAN: I don't feel -- I don't feel too good, I don't want to come --

THE COURT: -- well, you come in at ten o'clock tomorrow.

MR. SILVERMAN: -- I don't want to collapse, Judge.

THE COURT: Well we can't -- we -- we can't just go for a half a day here and then --

MR. SILVERMAN: No, I know -- I know. Make it 2:00 perhaps?

THE COURT: No, no, no.

MR. SILVERMAN: Maybe I feel better if I can rest overnight.

THE COURT: No, you take all -- you go home and get a good rest --

MR. SILVERMAN: I don't feel -- Judge -- I don't feel good.

THE COURT: -- and we'll start at ten o'o'clock --

MR. SILVERMAN: Honestly. I'd rather be in in the morning, and it doesn't bother me. I don't feel good, I've got pressure on -- pressure on my chest.

THE COURT: Well --

MR. SILVERMAN: Can you make it two o'clock tomorrow?

THE COURT: -- then we won't -- let's -- let's start out tomorrow and then we won't -- I'll tell you, all I had in mind tomorrow is finishing up on the expenses and all and leaving the bank deposits until Wednesday. So we won't have a big job tomorrow. Let's come in at ten o'clock and try to clean up all the lose ends.

MR. SILVERMAN: I also want to go over the -- the last few items of the capital gains.

THE COURT: Well, you can do that.

MR. SILVERMAN: I want to do a Schenley too.

THE COURT: Pardon?

MR. SILVERMAN: Schenley was a transfer -- an exchange, not a sale --

THE COURT: All right.

MR. SILVERMAN: -- I got the documents and I got the evidence, I got the stock certificates here.

THE COURT: Well, we'll come back at ten o'clock and see how you feel then.

MR. KLETNICK: Your Honor, when do you want my witness here in the Court on the 872's?

THE COURT: Well, it's a quarter to five now.

MR. KLETNICK: When would you like him back?

THE COURT: Well, we can start out with him if you want. I'd wait until we get to the statute of limitations. He's -- is he still with the Government?

MR. KLETNICK: Right.

THE COURT: Yeah, let's wait until we get to the end. I don't know if we're going to have any problem with that or not. If you come up with some more stock certificates like that, I might throw your whole case out and it would all be moot.

MR. SILVERMAN: I wish you did.

THE COURT: But I'd like to see the originals of those certificates.

MR. KLETNICK: I'll look for them, see if I can find them.

THE COURT: We'll recess until ten o'clock tomorrow morning.

THE CLERK: All rise.

MR. SILVERMAN: Thank you.

(Whereupon, at 4:45 P.M., case was recessed as described above.

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: Frank L. Silverman

The foregoing pages, numbers 1 through 156 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Donna Dickert on June 21, 1976 in the United States Tax Court located in New York, N.Y., in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

Judy Koenig
(Name)

July 19, 1976
(Date)

A-517

UNITED STATES TAX COURT

FRANK L. SILVERMAN

Petitioner

vs

COMMISSIONER OF INTERNAL REVENUE

Respondent

Exhibit G

DOCKET NO. 3506-68

LOCATION OF HEARING: New York, N.Y.

DATE: June 22, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES: Frank L. Silverman,
Pro Se

Theodore J. Kletnick and
David Brodsky,
Attorneys for Respondent

was it?

MR. SILVERMAN: No, Joe.

THE COURT: Joe. I don't know -- we'll see what the certificates show. We may have to get handwriting experts in here.

MR. SILVERMAN: Well he's not around.

THE COURT: Pardon?

MR. SILVERMAN: He's not around anymore.

THE COURT: No, I say, we may have to -- on your certificates --

MR. SILVERMAN: Oh my certificates.

THE COURT: -- yeah, we may have to get handwriting experts.

MR. SILVERMAN: Oh.

THE COURT: All right. Now, let's see -- now we come down to the expenses.

MR. SILVERMAN: Yes.

THE COURT: Now do we have a schedule of the expenses the respondent allowed?

MR. SILVERMAN: We'll have to find it first.

MR. KLETNICK: Your Honor, I think the expense schedule is 21-U.

THE COURT: 21-U.

MR. KLETNICK: Mr. Silverman's professional expenses, Your Honor.

THE COURT: All right, 21-U. 1961. Now looking for that gross income schedule, what was that one? So we can make sure that the --

MR. KLETNICK: I think -- it should be 20-T, but I think we have our lost our copy.

THE COURT: 20-T, make sure the expenses that -- that this -- this fee splitting is --

MR. KLETNICK: 19-S and 20-T.

THE COURT: -- is reflected in the -- in the expense schedule, is that right? That's what you claimed.

MR. SILVERMAN: Your Honor, we talked about --

THE COURT: All right, we have that, okay. Now then, Mr. Silverman --

MR. SILVERMAN: Yes sir.

THE COURT: -- let's start here with 1960.

MR. SILVERMAN: 1960.

THE COURT: And we've got business expenses.

MR. SILVERMAN: I can't find that sheet.

THE COURT: 21-U. You claimed $12,000.00 --

MR. SILVERMAN: 1960 we got now?

THE COURT: '61, excuse me.

MR. SILVERMAN: '61.

THE COURT: You claimed $12,259.47. First item of adjustment is car expense --

MR. SILVERMAN: They disallowed that --

THE COURT: Disallowed 100%.

MR. SILVERMAN: -- the agents first prepared the notice allowed 100%.

THE COURT: Now, on what basis did -- was that disallowed?

MR. KLETNICK: No business usage, Your Honor --

THE COURT: And what -- what --

MR. KLETNICK: -- and no substantiation.

THE COURT: -- well what was Mr. -- what was Mr. Silverman doing in 1961?

MR. KLETNICK: I believe that he was an attorney and he was basically employee of the -- judging from what he reported on his return, he was basically an employee of the workmen's compensation board.

THE COURT: Well don't you have to get around when you have that kind of a job?

MR. KLETNICK: I don't think so, I think he just went -- Mr. Silverman testified in the District Court that he just went to the office every day from eight -- Mr. Silverman said he got there at about eight-fifteen and he stayed there until five-thirty --

MR. SILVERMAN: Now, Mr. Kletnick doesn't know what I testified to. I testified, and I remember my testimony. I used the car to meet clients, to pick up clients, to get papers signed in their homes, that's what I testified in Court.

THE COURT: All right, now what is this. Is this the total car expense Mr. Silverman?

MR. SILVERMAN: That's the -- I took for that particular year, Judge. I only got-- I had yesterday, I don't know where I put it.

THE COURT: Well suppose we allow you $1,000.00 for the use of the car?

MR. SILVERMAN: No Judge, I spent more than that. I've got receipts for those items.

THE COURT: I know they got for receipts for it, but you also have to show what the mileage was used -- you can't deduct the cost of getting -- going to work in your car, so --

MR. SILVERMAN: I know that, but I never used it for work, I used --

THE COURT: -- well you know -- how did you get it down there. Did you leave it parked at your office?

MR. SILVERMAN: No, -- I had a garage, I paid the public garage.

THE COURT: You mean you left it downtown, you didn't drive home in it?

MR. SILVERMAN: No, I used the buses to go home. I -- I used the car mostly at night to see people. I wasn't working the whole day. That's -- I needed the car very important at the time. I spent every nickel. I spent more --

THE COURT: All right, let's -- what are these -- do you have the -- the amounts showing these expenses, is that right?

MR. SILVERMAN: Yes, I have.

THE COURT: Has respondent checked those amounts?

MR. KLETNICK: We -- we've asked Mr. Silverman for documentation on the expenses and we haven't received any --

THE COURT: I know, but that should have been done at the time -- what does the Revenue Agent's report show?Why did he disallow it. Did he disallow it on the basis of non-business use, or did he -- it seems to me that -- let -- let's get down here and be a little honest in these things. I don't care whether this man was convicted of this or that or --

MR. KLETNICK: He -- he disallowed it for no business purpose.

THE COURT: -- anything else. If he used his car for business purposes, why they got to be -- they'd have to be some dollars in here in the allowed column. So -- so you disallowed it on the grounds that he did not use it for business purposes at any time at any place, isn't that right?

MR. SILVERMAN: Which is not true, Judge.

THE COURT: Well, all right, just let me handle this Mr. Silverman. Is that right?

MR. KLETNICK: Respondent's disallowance was based on no business purpose, however, because --

THE COURT: All right, well then let's

MR. KLETNICK: there was no business purpose shown, the agent went no farther and --

THE COURT: All right, well, we aren't going any farther either. Take the stand Mr. Silverman --

MR. SILVERMAN: Yes sir.

THE COURT: -- come up here. Yeah, you're still under oath --

MR. SILVERMAN: Yes sir.

THE COURT: -- now --

MR. SILVERMAN: I understand that.

FRANK L. SILVERMAN,

recalled as a witness, having been previously duly sworn, took the stand and testified further as follows:

DIRECT EXAMINATION

BY PRO SE (Further)

THE COURT: With respect to the year 1961, you claimed $3,484.54 for car expenses. How did you arrive at the figure $3,484.54?

THE WITNESS: I parked the car at a public garage, Hillman Garage Corporation, it's on Delancy and Columbia Street. I garaged it down on 11th Street and Avenue B. I think that was the --

THE COURT: Well let's -- let's -- in other words, the $3,484.54, according to your testimony, that number one is garage bills --

THE WITNESS: Garage bills, oil and gas --

THE COURT: -- oil and -- now wait, were those paid -- how were those paid?

THE WITNESS: Many times, I paid by cash --

THE COURT: But I mean how -- how were they recorded?

THE WITNESS: I made a note and I kept it in the glove compartment. I sometimes paid by check.

THE COURT: All right.

THE WITNESS: I would sometimes charge it with the oil companies, I had a credit card sometimes.

THE COURT: All right now --

THE WITNESS: All -- all the --

THE COURT: -- now where's these documents, do you have these documents today?

THE WITNESS: I've got some. I brought some with me this morning, I think. I'll show you --

THE COURT: All right now --

THE WITNESS: -- Your Honor --

THE COURT: All right now let's -- let's -- let's get on here. Now you -- you left the car downtown and it's your claim that the -- the -- the principal if not the sole purpose of -- of having the car was that it was required to go out and interview people in connection with your compensation claims and the like?

THE WITNESS: No, I never used it for the state's business. I used it for my business.

THE COURT: I see. For your business.

THE WITNESS: Yes sir.

THE COURT: And so it was in connection with your practice?

THE WITNESS: Yes sir.

THE COURT: And you used it to go out in the evenings, is that it?

THE WITNESS: To see people, yes -- yes sir. Sign releases, to get papers signed --

THE COURT: Now where did you live?

THE WITNESS: On 8th Street.

THE COURT: In town?

THE WITNESS: Manhattan.

THE COURT: Yeah, how -- how far away from the garage where you kept the car?

THE WITNESS: About four blocks.

THE COURT: I see.

THE WITNESS: The -- the 11th Street garage was about four blocks.

THE COURT: Right.

THE WITNESS: And the Hillman garage was about ten blocks,I walked.

THE COURT: And you never went out in the car for any other purposes?

THE WITNESS: I never used the car for any other purpose.

THE COURT: And you didn't go on a vacation and use the car?

THE WITNESS: No, I never went on vacation.

THE COURT: I see.

THE WITNESS: I worked --

THE COURT: You didn't go to your son's Barmitzvah in the car?

THE WITNESS: My son's Barmitzvah was Barmitzvah was on 8th Street and Avenue B, around the corner from my house.

THE COURT: It's hard to catch you.

THE WITNESS: Well that's the fact, that's the truth Judge. I'm only telling you what happened -- what took place.

THE COURT: All right, let's allow up to $2,500.00 a year for the car.

MR. KLETNICK: Your Honor, can I ask a few questions?

THE COURT: All right, ask a few questions.

CROSS EXAMINATION

BY MR. KLETNICK

Q Mr. Silverman, did -- did you son ever use the car?

A My son was thirteen or fourteen years old or fifteen years old. He had no license to drive a car.

Q Okay, and how old was he in 1963?

A Well you figure it out.

Q When was he born?

A '37, '38, I don't know. I don't know. My wife keeps the record.

Q Okay --

A My son didn't use the car.

Q -- well, if he was born in 1938, then how old would he be in 1960? He'd be 22, wouldn't he?

A Would he? I don't think so.

THE COURT: Yeah, he'd be 23.

THE WITNESS: 23.

MR. KLETNICK: 23. Okay, so your son --

THE COURT: Did he live with you in '61?

THE WITNESS: I think he was in the army at that time.

MR. KLETNICK: What about '62.

A '62, we all lived -- we lived downtown in '62, yes. He lived with us --

Q Did you son live with you?

A Yeah sure, he went to school.

Q Yeah, okay but your --

A He went to school.

THE COURT: Where did he go to school Mr. Silverman?

THE WITNESS: Where,he went to school in New York -- New York Law School.

THE COURT: I see.

MR. KLETNICK: Is it --

THE COURT: Let me -- let me --

MR. KLETNICK: -- did you son have his own car?

A Well he wasn't working, he had no need for a car.

Q Okay so your -- your testimony is now that your son never used that car, right?

A My son never usedthe car.

Q Okay, what about your wife?

A My wife doesn't drive.

Q Does your wife have a driver's license?

A She has, but she doesn't drive. My wife has 140 blood pressure, I'm afraid to let her walk out on the steps.

Q Your wife has no driver's license?

A She has a driver's license, doesn't drive. Never drove -- never drove.

Q Do you have a driver's license?

A Oh, sure.

Q Okay, how long have you had a driver's license?

A Oh, way back in the thirties.

Q Okay. Do you have any records of the use that you made of the car?

A Records of what?

Q Of -- of your -- of your car usage? Or records of your expenses?

A I have some records here.

Q Could you produce them?

A I'll have to look at the files.

Q Okay. Mr. Silverman, can you name any of the people that you went to visit?

A I'll have to look at the chart, I don't recall.

Q You have -- do you have a chart listing the names of --

A I have --

THE COURT: Well, we have -- counsel let's -- let -- the witness -- you -- we have a list of the cases he handled during these years. They're substantial in number. He had to get around somehow to get to these people. It involves

Q And those would be the only people that you visited by car?

A There was other people-- prospective clients too. Upstate too, I was -- had clients, like --

THE COURT: You know, I'd be more impressed with this line of questioning if the Secretary of the Treasury didn't get picked up in a limousine and driven to the office every day picked up and driven home and his wife gets driven all over town and when one of the Secretaries lived in our building, he didn't even own a car and he -- she would have starved to death because there's no way she could walk to the grocery store.

MR. KLETNICK: That's not the issue here.

THE COURT: Now in the interest of moving along on this case. You got -- you got expensive cars running all over this town and if you want to apply some strict standards, we'd have everyone of them here in the Courtroom. Just because we have other issues here, let's -- let's resolve the car on a reasonable basis and we'll give Mr. Silverman up to $2,500.00 car expense, or what he claimed, whichever is the lesser. Now let's get down to the next item, is stationery and printing. $131.00 disallowed. New York Telephone, I don't know how we get at these electric bills, didn't he have an electric bill? Steno service, entertainment. What was the entertainment?

in some cases, I'm sure, interviewing witnesses and the like. There's no use in -- in --

MR. KLETNICK: This testimony is inconsistent with some prior testimony Mr. Silverman gave, Your Honor.

THE COURT: Well --

MR. KLETNICK: I'd like to ask a couple more questions.

THE COURT: All right.

MR. KLETNICK: Mr. Silverman, where do most of your clients live?

A All over --

Q In -- in your negligence practice?

A -- all over the city.

Q They weren't -- they weren't --

A All over the city sir. Brooklyn, Bronx, Manhattan.

Q What percentage lived within a mile from your house?

A I don't know.

Q Can you hazard a guess?

A I don't want to hazard a guess. They were all over the city, sir. Take the list -- the closing statement, and see where -- look at the closing statement, they'll tell you where they live. The address is there. Every client is listed on the closing statement, where they reside.

THE WITNESS: Taking clients to have a cup of cofee or something.

THE COURT: Yeah, $375.00.

THE WITNESS: The whole year, three hundred --

THE COURT: Petty cash, $125.00. Now the other thing about these is that the respondent stated that in the adjustment of the fee income, these amounts that he had -- that the respondent restored to gross income, had been deducted as expenses, but I don't see any deduction for these amounts.

MR. KLETNICK: Cost of labor, CLA. I think it's the top one. The top one on the second page, anyway.

THE COURT: And -- and those amounts are allowed in there that you put into the gross?

MR. KLETNICK: That's correct.

THE COURT: All right. Okay, so you understand that Mr. --

THE WITNESS: Yes, except I promised the Court to produce the Katz & Grable file of the $1,200.00 --

THE COURT: Yeah.

THE WITNESS: -- Hadzinsky Case.

THE COURT: All right, well if --

THE WITNESS: I have it here.

THE COURT: -- if it's not -- do you have a breakdown of the fifty-one-one-eighteen? Well that's -- you had in your returns, so -- you know what it is, so -- the respondent is allowed those figures as claimed in your return for all years involved here. Now, if you paid out more than that and you have a record, we'll receive it.

MR.BRODSKY: Your Honor, as far as the labor cost go concerning the fee splitting, I believe we reduced the -- the professional income on our schedule.

THE COURT: No you didn't, that's where we had the argument.

MR. BRODSKY: I believe you did at --

THE COURT: Well I say, we'll -- we'll get it one place or the other, but the problem I have is that some of these figures at -- in 1962, we only had $1,839.00, now let's see what we did with -- with professional income. You have additional business deductions in 1962 of $2,417.36, now where are those in here? I don't see those here. On schedule -- on Exhibit 19-S. You show $2,417.36. Now, on schedule 21-U, you only take -- you only allow $1,839.05.

MR. BRODSKY: The additional business deductions on schedule 19-S are per the closing statements.

THE COURT: All right, but I mean you say they were allowed, but they weren't allowed, were they?

MR. BRODSKY: The net figure for professional income was picked up in gross income.

THE COURT: No, that's the -- isn't that the argument we had that you people -- your gross income is gross receipts, column one, that's what you picked up --

MR. BRODSKY: We had to distinguish between the fee splitting and the other expenses and the fee --

THE COURT: Well now you -- you better take another look at that because that -- that's the point that -- that we had that the -- the petitioner apparently took it off one way --

MR. BRODSKY: Let me direct --

THE COURT: -- and you set it back up and you -- you increased -- I've got the schedule here --

-MR. BRODSKY: Let me direct the Court to Exhibit 28-AB --

THE COURT: -- you increased the gross income, didn't you? Yeah, sure. I've got it right up here.

MR. BRODSKY: Your Honor, let me direct you to Exhibit 28-AB where the corrected figure for professional income is the net figure which would appear on Exhibit 19-S. The eleven-thousand --

THE COURT: Well, let's see --

MR. BRODSKY: Eleven-thousand-eight-two-six-sixteen for the year 1961.

THE COURT: We've got professional -- professional income. Well let's look at '62, now '62 per return, all right, now then, okay -- her we got Mr. Silverman. So --

I want you to understand this Mr. Silverman. In 1962, your professional income is shown as $9,004.31. That's taken from Exhibit 20-T, page two which then is put over on to 19-S and it's the Court's understanding that in 1962, you have been allowed all the splits amounting to $22,417.36 which is shown on Exhibit 20-T. So -- that -- that -- that item -- the cost of labor does include that. Now, let's get down -- what do you have on stationery and printing Mr. Silverman?

THE WITNESS: Those documents are there.

THE COURT: Pardon ?

THE WITNESS: That was documented in the return.

THE COURT: I see.

THE WITNESS: Judge, they did nothing for so many years, they asked no evidence of any records --

THE COURT: All right --

THE WITNESS: -- of any -- now they -- now they wake up after -- after --

THE COURT: -- how does the respondent -- the respondent picked out -- how does the respondent decide on $96.10 every year? For stationery and printing?

THE WITNESS: Judge, that includes forms, typewriting paper, carbon paper for the entire year. I wanted to see how they can buy so much -- that kind of stuff with that little money at any time.

THE COURT: Well I just --

MR. BRODSKY: Your Honor, the stationery figure was based on a 1962 audit and --

THE COURT: -- well nineteen --

MR. BRODSKY: -- that figure is what he substantiated and he didn't substantiate anything else for any other year, so he was allowed that for all of the years.

THE COURT: All right, what about the electric bill, doesn't he get any electric bill? Telephone, same way, $195.26. His income went up in those years, according to your figures, so I think his expense would go up. I'll tell you what we'll do with these schedules. These schedules will disallow all the entertainment -- those are round figures Mr. Silverman and we don't have anything to show for that.

THE WITNESS: Judge --

THE COURT: We'll reduce the car expense and not more than $2,500.00, we'll allow you the electric costs and the New York Telephone. We'll take the respondent's stationery and printing because he checked that out for one year. And --

THE WITNESS: I'm going to submit bills that will show the contrary Judge. Way above that item.

THE COURT: Way above what?

THE WITNESS: I'll give it to you. The printing --

the printing and stationery.

THE COURT: Well, the problem here --

THE WITNESS: I'll give it to you -- I got it --

THE COURT: -- Mr. -- Mr. -- Mr. Silverman, there's no use in -- if I'm going to go down here and — and lean a little this way and lean a little that way, why don't we get rid of this picayune stuff on that basis. If you want to go on down this on a dollar and cents basis --

THE WITNESS: No, no -- I'll leave --

THE COURT: -- you're not going to get — you're not going to do as well.

THE WITNESS: -- I'll leave it to the Court.

THE COURT: All right.

THE WITNESS: I'm not going to argue with the Court.

THE COURT: So let -- let's dispose of it on that basis and now -- there -- there's one item here where we have a hotel accommodations, $215.00 in nineteen -- 1962. Do you know what that was for?

THE WITNESS: Yes, I spent some time upstate at -- spent a couple of nights -- I had to spend --

THE COURT: A couple of nights upstate, many you could have blown the town wide open for $200.00 in those days, huh?

THE WITNESS: No, I -- I had some business upstate.

THE COURT: I know it, but you couldn't spend $200.00 in a couple of --

THE WITNESS: Well I spent it during the year Judge, that wasn't just one time.

THE COURT: Do you have a record of that?

THE WITNESS: I suppose I'll have to check for it.

THE COURT: Yeah, otherwise, we'll disallow that -- we can't -- there's no basis to allow it on. We'll leave the telephone alone and we'll leave the electric alone. Now, we got $475.00 for steno service.

THE WITNESS: Yeah.

THE COURT: Does anybody have -- do we have any record as to what that is. Four-hundred -- oh, I thought it was $4.88 --

THE WITNESS: No, four-hundred --

THE COURT: -- we have $488.19 --

THE WITNESS: -- $488.00.

THE COURT: -- in 1961. Anybody have any record on that?

THE WITNESS: Sure --

THE COURT: We have none in 1963.

THE WITNESS: -- typing complaints. Some is different then the -- typing -- Your Honor knows what the --

THE COURT: Well, how did you pay this out?

THE WITNESS: That's the way it was done.

THE COURT: Cash or checks or --

THE WITNESS: Sometimes cash, sometimes a check.

THE COURT: Well, do you have --

MR. BRODSKY: Your Honor?

THE COURT: Yeah.

MR. SILVERMAN: These girls -- if these girls wanted to get cash, we gave them cash.

MR. BRODKSY: The steno expenses were allowed on the judicial closing statement schedules as additional business expenses above the line. Exhibit --

THE COURT: Above the line? Well now, let me see these then, okay.

MR. BRODSKY: Where we -- where we reached the net income from the judicial closing statements.

THE COURT: Do these expenses -- of these cases, does that include steno expenses Mr. Silverman?

THE WITNESS: I didn't charge them steno expenses. I -- I absorbed it. I paid for it.

THE COURT: Yeah, but what I mean is that on the closing statements -- did --

THE WITNESS: No, no sir. Oh, no sir, disbursements made on that statement were all specific items, it's all listed.

THE COURT: That's right, you can't charge --

THE WITNESS: But judicial closing --

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THE COURT: -- you can't charge typing in on the closing statement?

THE WITNESS: no -- no, sir. You can't do it.

THE COURT: You can't do that counsel.

THE WITNESS: They don't allow it.

MR. BRODSKY: Your Honor--

THE COURT: Let's put the agent up here. I'll bet you ten to one that they're not in there. The -- the -- do the closing statements include steno expenses?

MR. WALLACE: Yes, they do.

THE COURT: Well, where are they, let's see them.

THE WITNESS: You can't put them on a closing -- closing statements.

THE COURT: Well, we'll find out. Let's look at one of them.

THE WITNESS: It's not permitted, it's against Judicial Conference Rules. Your Honor, the Judicial Conference Rules makes you itemize every dollar of expense that you have with any particular case --

THE COURT: All right, you can itemize that you paid somebody $20.00 to type up a complaint. That's no problem, is it?

THE WITNESS: But you can't -- you can't charge that.

THE COURT: All right.

THE WITNESS: You're talking about actual disbursements --

THE COURT: We'll let the -- we'll get the closing statements out and let them speak for themselves.

MR. KLETNICK: Excuse me, Your Honor. While -- while there's a delay, could I ask the Court's indulgence to ask another question of Mr. Silverman on the --

THE COURT: All right, go right ahead.

MR. KLETNICK: -- on the automobile expense. Mr. Silverman, I'm going to show you a copy --

THE COURT: Oh no, we're not going to fuss with automobile expense anymore.

MR. KLETNICK: Well, I think --

THE COURT: I'm just telling you we're not going to fuss with automobile expense anymore.

MR. KLETNICK: Well, I would like to ask this question anyway, to make our records, Your Honor.

THE COURT: You don't need it for your record.

MR. KLETNICK: Can I --

THE COURT: He hasn't substantiated expenses. I -- everybody agrees with that, that's his best estimate, now if you -- if you want to appeal the case on that basis --

MR. KLETNICK: Well this concerns the amount of business usage --

THE COURT: -- be my guest.

MR. KLETNICK: -- since Mr. Silverman testified in District Court --

THE COURT: All right well -- what -- what did he say in the District Court?

MR. KLETNICK: After some testimony concerning the fact that most of his clients were -- were negligence clients, Mr. Silverman as a question as follows,"Most of them the negligence clients live fairly nearby you? " "Around the area, yes", was Mr. Silverman's answer. " You would walk over to their house?" "Some would come to my house, I would go to their house. We were neighbors." I think --

THE WITNESS: Mr. -- Mr. --

THE COURT: Well let -- let -- we've got the closing statements. If you want to put those in the record and make an issue of that, fine.

MR. KLETNICK: -- well I think just -- I think this impeaches his testimony.

THE COURT: When you're talking about clothes, and this that and the other, and --

MR. KLETNICK: I think he didn't drive there, I think he walked to their houses.

THE COURT: -- and somebody leading the witness and all -- I'm not interested in that because as a matter of fact, the more you -- you introduce here that came from the record in that case, the less impressed I am frankly.

MR. KLETNICK: Well I'd like to introduce --

THE COURT: Because from what I've seen, I wouldn't have admitted it if I had been the Judge in that case, I would have thrown it out, including those certificates and -- and that -- and that transcript from that account, see.

MR. KLETNICK: Well, I'd like to have this marked for identification, Your Honor and offer it.

THE WITNESS: I'm going to object to it, Your Honor.

THE COURT: Objection sustained.

THE WITNESS: I'm going to object that it be marked for any purpose.

THE COURT: And I'm going to say right now that the purpose of that objection is that if the petitioner -- if the respondent has any specific section of that transcript that he wishes to read into the record as constituting testimony that's ~~in~~consistent with what the witness has here testified to, it'll be that portion -- will be received for that purpose and the witness will be given an opportunity to explain if he may -- if he's able to do so whether or not there is a difference in his testimony. In the absence of that, the -- the transcript as a whole is not admissable. And that's my ruling. If you don't want to

MR. SILVERMAN: You did, I guess.

THE COURT: Steno service, what's this one here. Steno -- steno service. Steno service -- you had some other typing charge too, didn't you Mr. Silverman?

MR. SILVERMAN: Sure, we have typing.

THE COURT: What about the steno service, that started -- let's see when we had -- the problem with that Mr. Silverman is that -- that the way it comes in and out. The year 1960, if my sheedules are lined up right, that's one, two three -- you had $568.40 for steno service. In the year 1961, you had $488.00 for steno service. In the year 1962, you had $475.00, in the year 1963, you had nothing. In the 1964, you had nothing. In the year 1965, you had $206.90, so how could you get by without any in some years and --

MR. SILVERMAN: Maybe I didn't spend any money those years.

THE COURT: Well you had -- if -- what did this -- what did this expense consist of?

MR. SILVERMAN: Of typing.

THE COURT: But who typed?

MR. SILVERMAN: I had somebody come in week-ends.

THE COURT: ~~On~~ week-ends?

MR. SILVERMAN: Evenings, yeah, sure.

THE COURT: How did you pay them, in cash?

that was treated in W-2's in a different category.

MR. SILVERMAN: Well he was an errand boy and everything else.

THE COURT: Well then --

MR. KLETNICK: That -- that was my understanding, Your Honor. But I'm not going to quibble about --

THE COURT: -- if your wife did all your typing, how could we --

MR. SILVERMAN: Yes, that's true.

THE COURT: -- how can we allow you for typing.

MR. SILVERMAN: Judge, my wife -- my wife doesn't work for me, she used to help me out. Never worked for me. Used to keep my bookkeeping records and everything else.

THE COURT: Well didn't you -- did you -- is it a fact that you testified in your trial that--

MR. SILVERMAN: I testified that I had some people come and type for me. I did, I testified.

THE COURT: Well let's give you -- we'll give you $120.00 across the board for typing and --

MR. SILVERMAN: Judge, that's not --

THE COURT: -- well that's all I can -- that's more than I should give you Mr. Silverman, I --

MR. SILVERMAN: -- make it at least -- make it at least two-fifty -- I'll get -- I get 50% --

THE COURT: -- no, I'll give you hundred -- I'll have to give you zero then. I'm giving you $120.00 to soften you up for what's going to come tomorrow, that's all. See?

MR. SILVERMAN: Prepare me for the kill.

THE COURT: Yeah, that's right -- that's right, I want to fatten you up. So let's -- let's put in $120.00 a month (sic) for typing -- let --

MR. SILVERMAN: You said $125.00 before.

THE COURT: No -- I mean $120.00 a year, excuse me, for typing. Entertainment's out, petty cash is -- we'll -- we left you $75.00 in petty cash, that was probably what you used for the typing. Law periodicals and law publications are out in the absence of proof. Miscellaneous expense is out. That's about it, what they've disallowed here -- Mrs. "Freker"-- no. Now we get to this moving expense, $75.00 in '65. Will you tell us what that was?

MR. SILVERMAN: Well that's what I spent for a truck to move me up from 280 Broadway to 258 Broadway. Anybody that can live with this kind of money, I'd like to know. Doing a personal favor to me.

THE COURT: Well I think that's -- that's fair isn't it counsel. I can't see -- I can't see, yeah, we'll give you the moving expense.

MR. SILVERMAN: A very personal favor -- two people --

THE COURT: So that takes care of the schedule.

MR. SILVERMAN: -- that I represented.

THE COURT: That takes care of this schedule.

MR. BRODSKY: Your Honor, I'm not sure if the process server was covered.

THE COURT: Process server, I don't think was disallowed, was it? I thought they were allowing the process server.

MR. SILVERMAN: They allowed part of it.

THE COURT: Yeah.

MR. SILVERMAN: How can they disallow process server?

THE COURT: Well they got them off of the sheets, I assume. There isn't enough there to worry about anyway --

MR. SILVERMAN: No, I'm not worried about it.

MR. BRODSKY: We'll-- we'll concede that.

THE COURT: Yeah, either way. Now we get down I guess the only item we really have left are the few stock items, a couple of stock items in the -- and the unexplained deposits. Am I -- is the Court correct in that understanding. Now what -- what did counsel find out on -- on when we can get these stock certificates in ?

MR. BRODSKY: Your Honor, I tracked down the former secretary for Atlas and the company has merged with other companies and so on. He informed me this morning that

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the stock certificates were destroyed about two years ago going that far back. The original certificates had been returned to him and he had directed that they be destroyed.

THE COURT: I see, well -- I -- I think in the face of the obvious discrepancy on -- on those copies, we just can't accept those copies as being --

MR. BRODSKY: Your Honor, with regard to the class A of Atlas, and the confusion yesterday with Mr. Mogee, I do have a -- a letter from our files submitted to the Special Agent in 1965 from Mr. Mogee that does indicate that non-B shares or simple common stock shares of Atlas were cancelled in -- in 1961 and the number of shares that we had assigned --

THE COURT: Well maybe he made a mistake if — I think we'll go -- we have to go on his record there and then --

MR. BRODSKY: I -- I've --

THE COURT: -- the Court will have to decide what to do on --

MR. BRODSKY: -- Your Honor, I've called Mr. Mogee --

THE COURT: -- 1960 -- on -- on the class B.

MR. BRODSKY: -- as far as the confusion on the class A, I called Mr. Mogee and he wasn't in this morning and we haven't been able --

THE COURT: Yeah --

MR. BRODSKY: -- to get in touch with him.

THE COURT: -- well, let me say this, is -- am I not correct that to the extent that we -- I would assume that the -- there probably was an adjustment in the -- in the deposit picture for the amount revised as a result of these sales, wouldn't there be? So I mean it doesn't make any difference if we take the sales out, we -- we've got more -- more unexplained deposits. So I -- I'd say we'll leave that item until we see what happens to it as we go through the unexplained deposits and what I -- what the Court would like to do is -- is give the respondent a chance this afternoon to take the exhibits that the petitioner put in and have your people check them all out and make sure that you're in agreement and that we have this 5% question -- a dividend question and the first in, first out rule -- petitioner's obligated to follow that, where there's no evidence to identify and where there's evidence to identify, he -- we have to use the -- the items sold. I mean, those are the rules that govern these transactions. So, if we can dispose of this Atlas question, we -- we may be at the point where all we're going to have to do is make -- is figure out how much, Mr. Silverman. And then you can argue the estoppel issue and the fraud issue and all if you want, but we won't have to worry about how much in -- in the -- in our briefs. All we'll -- all we'll have is legal questions, whether your waivers are good and whether the statutes run, see.

MR. SILVERMAN: Yes, we have another question that I'd like to advance to the Court at this time. In 1965 and 1966 return. The agents shifted the income for the year from '65, thereby giving --

THE COURT: Well that certainly -- that would certainly mitigate any proof of fraud, but the trouble is if -- if it -- if the Court understands it, that you are actually convicted for all years, then there's no way that you can avoid the fraud penalty. No way, you're not --

MR. SILVERMAN: Well I'm talking about the items that they shifted from one year to the other.

THE COURT: Well it -- we'll have to just -- they'll have to go in whatever year they belong, whether they shifted them or not.

MR. SILVERMAN: Well, I said I sold the stock that was reportable in '66, they shifted it to '65.

THE COURT: Well if you're-- if it was sold in '66, the records will show that. What --

MR. KLETNICK: We've got the check --

THE COURT: Yeah --

MR. KLETNICK: -- the actual --

MR. SILVERMAN: It was --

MR. KLETNICK -- we'll put it in right now. We've got the actual Braniff check, the original check.

MR. SILVERMAN: I have the checks too, I know when the check was issued to me by --

THE COURT: All right, well then -- why -- was the stock -- wasn't the stock sold when you got the check?

MR. SILVERMAN: The check -- the stock was tendered and a check was mailed to me in December.

THE COURT: No, when you make these tenders, unless you can show me the terms of a tender, they don't mail you a check, until they actually accept your tender, once they mail you the check, they've accepted your tender and -- and that's a sale.

MR. SILVERMAN: But the time -- the time of receipt of the money it constitutes a transaction, not before I receive the check. Or the payment for the stock.

THE COURT: Well the payment -- respondent hands me a check here --

MR. SILVERMAN: Yeah, I'm mindful of the check, I admit I got this check.

THE COURT: You got this check for --

MR. SILVERMAN: Yeah, sure I did.

THE COURT: -- $37,500.00 --

MR. SILVERMAN: That's true, yes.

THE COURT: -- and it was cashed December 17, 1965.

Now this --

MR. SILVERMAN: It was.

THE COURT: -- this was subject to your control isn't that right?

MR. SILVERMAN: It was deposited with a bank. I have a letter from the bank stating --

THE COURT: Now wait a minute, deposited with what bank? It was deposited with you in your bank account, wasn't it?

MR. SILVERMAN: Merchant's Bank, it was deposited with, that's right.

THE COURT: Well why did you endorse it then?

MR. SILVERMAN: I beg your pardon?

THE COURT: You endorsed it and sent it back to the bank? Is that what it was? Do you have the terms of the tender? Let me ask the respondent, why would -- why would Mr. Silverman endorse this check and send it back to the National Bank of Dallas if he had the right to this money, then?

MR. KLETNICK: I think it went into his Merchant's bank account. He drew checks on it starting December 17th --

THE COURT: Well this is Merchant's Bank of New York. No, he didn't send it to Dallas.

MR. SILVERMAN: No, it went into my bank, Judge.

THE COURT: Yeah, well then how -- that's --

that's income to you - you -- you --

MR. SILVERMAN: Just a moment --

THE COURT: -- you could have gone to Florida along with everybody else.

MR. SILVERMAN: No, the bank advised me I cannot draw anything on this until the first of the year.

THE COURT: Well let me -- look Mr. Silverman --

MR. SILVERMAN: I have a letter to the effect.

THE COURT: -- I'm sure that in your business that you know the law of negotiable instruments, don't you?

MR. SILVERMAN: I know the law, yes --

THE COURT: All right --

MR. SILVERMAN: -- I'm presumed to know.

THE COURT: -- here -- here's a negotiable instrument dated December 9, 1965, right?

MR. SILVERMAN: Yes.

THE COURT: It's sent to you and you endorse it and deposit it --

MR. SILVERMAN: December -- I got it --

THE COURT: -- in December 13, 1965 --

MR. SILVERMAN: -- something like that -- something like that, yes.

THE COURT: -- it clears the First National Bank in Dallas on Decmeber 17, 1965. Now there's no way that

I know of that there could be any restriction on you withdrawing this money.

MR. SILVERMAN: Judge, will you please look at this before you say something else on it?

THE COURT: All right, well I'm just looking at this --

MR. SILVERMAN: Yes, I want to show you I have a letter from the bank that advised me that I may not use -- issue any checks or pay any bills on this until the beginning of the year.

THE COURT: And I'm amazed that the bank would have the temerity to send you such a letter.

MR. SILVERMAN: Well, I show you the letter.

MR. KLETNICK: We can put it in the bank account, Judge. He drew on it, he actually wrote some --

MR. SILVERMAN: I did not, just a minute, excuse me. I did not, I got checks in here I drew after January the 1st.

THE COURT: All right, now, let's see --

MR. SILVERMAN: Here are the checks.

THE COURT: -- all right, there's the letter --

MR. SILVERMAN: Just a minute Judge, I want to show you something else. Here are checks that I drew --

THE COURT: -- well that's maybe -- that maybe because you owed them other money, isn't that right?

MR. SILVERMAN: I don't owe any money to the bank. Here are checks --

THE COURT: Well let me ask you -- let's mark this for identification.

MR. SILVERMAN: Yes.I began to draw checks after January the first on -- on this -- on this check. I deposited in savings account, I've got the account.

THE COURT: Well we'll see -- we'll see.

MR. BRODSKY: Your Honor, I have the bank statement that shows that he's --

THE COURT: Yeah, well first let's -- let's get this letter straightened out here.

THE CLERK: Your Honor, Respondent's(sic) Exhibit 79 is marked for identification. Excuse me, Petitioner's Exhibit 79 is marked for identification.

THE COURT: Petitioner's Exhibit 79 and it's a form letter, at least a --

MR. SILVERMAN: Let me give you a copy please -- I want -- oh, I've got the original --

THE COURT: -- you -- you can keep that.

MR. SILVERMAN: -- no, he can have it, it's all right Judge. 79?

THE COURT: This is -- this is for -- this is addressed to the petitioner, signed by Ruth Jacobson, Assistant

Secretary. "Please advise --" this is January 24, 1975.

MR. SILVERMAN: Yeah, I got it a year ago when I was waiting for trial, that's right.

THE COURT: Now wait a minute -- "please be advised that the check in the amount of $37,500.00 deposited by you on December 13, '65 drawn on a Dallas, Texas bank was not available for withdrawal until January 1, 1966." Well, I would have to say Mr. Silverman that I don't know how Mrs. -- Ms. Jacobson comes to that conclusion, but from what I know about the law of negotiable instruments, there's no restrictions on this check, it was deposited and paid by the bank in Dallas on December 13th. Now, you -- you would have to agree, would you not, that -- that on the instrument itself, there's no -- there's no restriction on withdrawal, is there?

MR. SILVERMAN: No restriction.

THE COURT: All right

MR. SILVERMAN: That's true.

THE COURT: And we don't know of any contract that the Merchant's of New York was privy to that would make it restrictive, do we?

MR. SILVERMAN: Judge --

THE COURT: She doesn't say why. Now let me ask you something else.

MR. SILVERMAN: Yes.

THE COURT: If this money is -- is unrestrictedly credited to your account, by the First National Bank of Dallas on December 13, 1965, how can the Merchant's Bank have any authority to keep you from withdrawing that money?

MR. SILVERMAN: Yet, the first check that I issued was after January one.

THE COURT: So I -- I -- I -- in the absence, I just -- the Court will just have to conclude that this letter which the lady wrote in January 24, 1975, if cannot be predicated upon any restriction insofar as Greater American, the -- the issue of the check is concerned, and if it couldn't be withdrawn by you, it might only be because the bank wouldn't let you withdraw it for other reasons between yo and the bank, that's the only thing I can see, in which event, that wouldn't effect the taxability. Now let's see the account, the respondent has the account here and we can take a look at that. We'll -- we'll admit Exhibit 79 and Respondent's Exhibit AL admitted in evidence.

MR. BRODSKY: I have the account here from the Merchant's Bank, the bank statement which indicates that the account was in fact drawn on before January 1st --

THE COURT: Well let's -- let's see if it was drawn down to more than less than thirteen -- thirty-seven-five.

That would be the -- the fact that it was drawn on would not prove anything. Let's see, we may not even put that in as an exhibit, let me just see it a minute. Now, Mr. Silverman --

MR. SILVERMAN: Yes, sir. I'm with you, Judge.

THE COURT: -- your account shows that you drew it down to $30,000.00, so --

MR. SILVERMAN: I did?

THE COURT: -- yes sir.

MR. SILVERMAN: That bank -- that bank would pay any sum that I would draw on, but --

THE COURT: All right, but the -- you can't say that this money was not subject to withdrawal.

MR. SILVERMAN: If -- if you'll look -- if you'll look at this statement -- if you look at that statement, Judge, you will see that I drew -- that I was short before I deposited this check. Look at it, you'll see it, please.

THE COURT: You had $89.00 --

MR. SILVERMAN: I was short.

THE COURT: -- wait a minute, no, according to the statement, as I see it -- you had $29.82 as of the opening -- the close of November -- November 30, '65.

MR. SILVERMAN: That's true.

THE COURT: On December 7th, you put $50.00 in, that gave you $89.82. On December 13th, you deposited

$37,589.82 (sic) --

MR. SILVERMAN: That was the check in question.

THE COURT: In other words, the check in question, right.

MR. SILVERMAN: Yes.

THE COURT: You proceeded to write checks throughout the month of December and as of December 31, 1965, your balance had been reduced to $30,455.00. So you had in fact withdrawn approximately $7,000.00 of the thirty-seven, not withstanding this letter. But irrespective of that, Mr. Silverman, this letter which was written in 1975 proves nothing. I -- I -- why it would be restricted, I don't know, but it's certainly, on the face of the instrument itself, when the check was cleared and all, that's -- that money was your money, period. There's no restriction on that check.

MR. SILVERMAN: Ultimately, it was my money.

THE COURT: It was your money then. According to the check, see? The bank can't tell you that if you negotiate a negotiable check with them that-- that you're not entitled to that money,can they. The Dallas -- if the Dallas bank had -- had held up payment, that would have been different, but the Dallas bank paid that check on December 17th. See? So let's -- we'll -- let --

MR. SILVERMAN: Well, following your conclusion, Judge -- let's follow your conclusion.

THE COURT: All right.

MR. SILVERMAN: Now take the sixty -- '66 return --

THE COURT: Well the fact that you reported it in '66, will entitle you to adjustment, but that doesn't mean that -- that -- that it was right.

MR. SILVERMAN: Well the --

THE COURT: I can't --

MR. SILVERMAN: -- well the --

THE COURT: Pardon?

MR. SILVERMAN: -- but the Commissioner took the gravy and left the bones over. I had a substantial loss -- by I mean gravy, he took the $37,500.00, left me holding the bag, I lost --

THE COURT: Well maybe you'll have a carry-back, I don't know. Well --

MR. SILVERMAN: Statute of limitations, Judge. I can't -- I can't --

THE COURT: -- no, well a carry-back goes in and the recomputation if you have -- if you have a net operating loss carry-back. There's no statute on these years '65, if you -- '64, '63, '62 -- if you have a loss in '66, it can be carried back, it will be carried back. I don't know what your loss consisted of.

MR. SILVERMAN: I had no loss -- I have no loss.

$40,000.00 worth. $40,000.00 --

THE COURT: But in any event --

MR. SILVERMAN: six-ninety-five and change.

THE COURT: -- the Court can -- the result -- the resulting inability to charge off the loss is not -- is not determinative as to when you realized the gain on the Braniff stock on the basis of the record before the Court, you realized the gain in 1965. And that's -- the Court has no alternative except to so hold. And the only other thing the Court could think of is whether or not there was any restriction in the depository agreement, but even if there was and they send you a check, and that's subject to your dominion and control, you didn't need to cash that check at this bank, you could have taken it to some other bank, couldn't you?

MR. SILVERMAN: Could.

THE COURT: And the money -- they would have given you the cash right across the counter.

MR. SILVERMAN: They wouldn't have given me the money right across the counter. Nobody will give you $37,500.00 across the counter.

THE COURT: Well that's right, in New York, they send you unsolicited credit cards, but they practically arrest you if you try to cash a $50.00 check from out of town.

MR. SILVERMAN: You know they keep -- they keep them for a week, ten days. You know that -- no bank --

THE COURT: I could never understand that banker's psychology out here.

MR. SILVERMAN: -- no bank would do it, you know that, and I know it.

THE COURT: The more they get those write-offs, the more I say they deserve it, see. Anyhow --

MR. SILVERMAN: Following your line of thought, Judge --

THE COURT: -- no, Mr. Silverman, you have shown nothing in this record that would warrant deferring the -- the realization of the gain on the Braniff from 1965 to 1966. A letter written by a young lady in 1975, which doesn't say how she reaches that conclusion which is manifestly contrary to the law as you and I understand it, is of no value. Now if there's some reason, the Court will be very happy to hear that reason. But I -- the Court is -- just can't conceive of any reason how -- you can't give a negotiable instrument on those terms, can you Mr. Silverman?

MR. SILVERMAN: If it's negotiable, it's negotiable.

THE COURT: That's right, well isn't that check negotiable?

MR. SILVERMAN: May take -- may take several weeks or ten days to clear it.

THE COURT: Well this cleared, that's the whole problem -- this cleared --

MR. SILVERMAN: It cleared in Dallas, it didn't clear in New York.

THE COURT: No, no, no. It -- it cleared in both places. The money -- it was cleared in Dallas December 17th and then the money was credited to your account, wasn't it. Once -- once it's paid by the National Bank of Dallas, that's it. There's nobody else can stop it, is there?

MR. SILVERMAN: The money was -- the money was credited in the account when -- at the time I deposited it, but it wasn't -- it wasn't for --

THE COURT: Well let me ask you Mr. Silverman, once this check is paid by the First National Bank of Dallas and they get possession of it, that's the end of it, isn't it? There's nobody else can hold up payment.

MR. SILVERMAN: That's the end of the paying bank.

THE COURT: The -- the bank that you deposit it in has to account to you for $37,500.00 because they gave up this check and they got $37,500.00, right?

MR. SILVERMAN: Not on the 17th because the --

THE COURT: Well that's what it shows.

MR. SILVERMAN: -- the Dallas bank only had receipt on the 17th, if you look at it.

THE COURT: No, no, paid -- paid.

MR. SILVERMAN: When they receive it, they mark it paid, yeah, sure -- they -- they --

THE COURT: Well all right, but they don't receive it by -- until they give credit to your bank.

MR. SILVERMAN: -- they did, they -- it goes to New York. It'd take another week or ten days.

THE COURT: Well --

MR. SILVERMAN: And then we had the holidays in between, we had Christmas -- then you Have Christmas and New Years, four days.

THE COURT: Mr. Silverman --

MR. SILVERMAN: To --

THE COURT: -- if you can demonstrate that this money was not available prior to December 31st, I'll be glad to receive such proof. But --

MR. SILVERMAN: -- what do I do with -- what do I do with the $40,000.00 in the meantime --

THE COURT: This -- this --

MR. SILVERMAN: -- that I sustained losses?

THE COURT: -- this young lady says here that it was not available until January 1, '66, if that was true, you were overdrawn, but they don't show you overdrawn.

MR. SILVERMAN: I wasn't overdrawn.

THE COURT: Okay. So let's recess then and you -- give you a good rest because tomorrow, we're going to get to the -- to the real difficult part, the -- the unexplained deposits. And hopefully, when we finish that, why, the same time, we'll have our -- we -- we don't have the stock certificates, do we? That's right. Now, what about the Burnham records. Do we have the original of those?

MR. KLETNICK: We have a witness that's been subpoenaed. And they're -- they're looking for them and they're going to bring in what they have.

THE COURT: Okay. Maybe we can get the originals of those.

MR. KLETNICK: Your Honor, before we conclude, I have a couple of documents, I'd like to introduce. They're certified copies of the conviction and the indictment --

THE COURT: All right. All right, that's all right.

MR. KLETNICK: -- in the criminal case --

THE COURT: They'll be --

MR. KLETNICK: -- I'd like to point out one thing to the Court. I obtained the -- well why don't we mark them for identification first?

THE CLERK: Want them as one exhibit?

MR. KLETNICK: Mark them as two separate.

THE COURT: Now what is the -- the indictment has nothing -- what -- why is the indictment admissable?

MR. KLETNICK: Because the conviction says counts one, two, three, four and five --

THE COURT: Oh, I see.

MR. KLETNICK: -- and the indictment shows what the counts are.

THE COURT: Well then mark them one exhibit and attach the indictment to the conviction.

MR. SILVERMAN: May I have copies, please?

MR. KLETNICK: Yeah.

MR. BRODSKY: Your Honor, I would request permission at this time to withdraw the copies of the stock certificates that the Court now holds and request permission to possible correlate the backs and the fronts?

THE COURT: Well no we're not -- those certificates are not going to be admitted without the originals. So there's no point in -- in trying to correlate them. Unless -- unless the originals produced, the Court is not going to -- not going to admit those certificates. I might say that as near as -- as I could determine, they don't correlate, I think they may have gotten these mixed up with the -- with the A certificates, I don't know. But -- but I think -- in light of what's happened, I think that the petitioner's entitled to insist upon the production of the -- of the originals.

THE CLERK: Your Honor, Respondent's Exhibit AM is marked for identification.

THE COURT: All right. That'll be received.

MR. KLETNICK: Your Honor, I'd like to tell the Court one thing, first.

THE COURT: All right.

MR. KLETNICK: Okay, AM consists of two parts, of certified copy, certified by the Deputy Clerk of the -- of the Southern District of New York Court, a certified copy of the conviction. Then I obtained myself and it's a one page document and the certification is right on the face of it. The second document is the -- is a certified copy of the Grand Jury indictment which is a five count indictment and in that document, the Clerk placed the certification on -- on page number -- on the page having the fifth count and then attached a couple of extraneous pages which appear to be just copies of the -- of the Clerk's notes on the proceedings. I went -- I went to the Court and this is what he gave me.

THE COURT: Well all we're interested in is the counts that were -- for which referred to in -- in the conviction and --

MR. SILVERMAN: Just AM, identification number? No number on it?

THE COURT: Yes --

MR. KLETNICK: Yeah, it's respondent's exhibit.

THE COURT: -- that's the Respondent's Exhibit AM.

MR. SILVERMAN: AM?

THE COURT: AM, Respondent's Exhibit AM. That'll be received, I guess for the -- well we have two reasons, one, we have fraud penalties involved, the statute of limitations and also because in the question of probity. Isn't that right? So anyhow, Mr. Silverman, we'll let prepare on the unexplained deposits which actually are -- I don't believe are quite as large as we started out with and --

MR. BRODSKY: Your Honor, has the Court indicated any adjustment on the A -- on the capital -- class A stock --

THE COURT: Well I would assume, I don't know whether -- how -- how you treated the --

MR. BRODSKY: -- assuming that we reduce the unexplained deposits by the proceeds from the --

THE COURT: Yeah, if the --

MR. BRODSKY: -- sale of class A stock.

THE COURT: -- that's right, then we'd have to take them back -- we can't reduce the unexplained deposits by stock that he said he never owned and didn't sell --

so -- so it may -- it may -- you may end up worse off, Mr. Silverman, but we'll -- we'll let it go whichever way we want.

MR. SILVERMAN: No, I'm not worried about that because I have more deposits where they claim I deposited and my computation and my schedules, Judge.

THE COURT: Very good, well I think --

MR. SILVERMAN: Before -- I gather from your total conversation, we're going to adjourn, now, right?

THE COURT: Yeah, I think we're going to start on the deposits fresh --

MR. SILVERMAN: I -- I'd like to --

THE COURT -- fresh tomorrow.

MR. SILVERMAN: -- I'd like to raise two other items before Your Honor adjournes Court.

THE COURT: All right. I'm feeling very patient right at the moment.

MR. SILVERMAN: I'm just -- it'll only take me a moment. In the nineteen --

THE COURT: That's good.

MR. SILVERMAN: -- sixty, they list an item of $16,725.00 --

THE COURT: Now then, let me see my master schedule here. 1960 -- oh this is in the unexplained deposits, do --

MR. SILVERMAN: Yes.

THE COURT: Well let's wait until tomorrow --

MR. SILVERMAN: Oh, fine --

THE COURT: -- for that.

MR. SILVERMAN: -- that's what I wanted to ask you a moment's --

THE COURT: Yeah, no -- no, no, no --

MR. SILVERMAN: -- a moment's patience.

THE COURT: -- we're going to take those up tomorrow.

MR. BRODSKY: Your Honor, if Mr. Silverman is going to introduce more schedules tomorrow, perhaps he would allow us to receive them now --

THE COURT: Do you have some --

MR. SILVERMAN: I'm not introducing any new schedules -- I'm -- I'm explaining the schedules.

THE COURT: Okay.

MR. SILVERMAN: I'm not introducing anything new.

THE COURT: All right then. We'll let everything go and I'll see you gentlemen at ten o'clock tomorrow then and -- and to the responden. -- if the respondent has any questions, as to capital gains, I think they're all listed here in the deposits.

THE CLERK: All rise.

(Whereupon, at 2:00 P.M. case was recessed as described above.)

A-574

UNITED STATES TAX COURT

FRANK L. SILVERMAN
Petitioner
vs
COMMISSIONER OF INTERNAL REVENUE
Respondent

Exhibit H

DOCKET NO. 3506-68

LOCATION OF HEARING: New York, N.Y.

DATE: June 23, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES: Frank L. Silverman,
Pro Se

Theodore J. Kletnick and
David Brodsky,
Attorneys for Respondent

FRANK L. SILVERMAN

VS.

COMMISSIONER OF INTERNAL REVENUE

June 23, 1976

10:00 A.M.

(Same Appearances)

THE CLERK: Be seated, Court is now in session.

MR. SILVERMAN: Good morning, Judge.

THE COURT: Good morning.

MR. KLETNICK: Good morning, Your Honor.

MR. SILVERMAN: I'd like to ask the Court's permission to submit the 1966 tax return which the Government has no objection to -- we spoke of before --

THE COURT: Yeah, we'll receive that. In other words, that's why you --

MR. SILVERMAN: That --

THE COURT: -- you want to show that --

MR. SILVERMAN: -- that loss.

THE COURT: -- that a transaction that we have in '65 was reported in '66.

MR. SILVERMAN: '66, yes.

THE COURT: Okay, we'll give it a number and receive it for that purpose.

MR. KLETNICK: Excuse me.

MR. SILVERMAN: That's all I'm offering this morning.

MR. KLETNICK: Yeah -- do we have the original of that -- we'll put in the original. That's just a retained copy, right?

MR. SILVERMAN: Well that's what you gave me -- you gave me a photocopy.

MR. KLETNICK: That's what we gave you?

MR. SILVERMAN: Yes, it's your photocopy. Are you going to use yours?

MR. KLETNICK: Yeah.

MR. SILVERMAN: All right.

THE COURT: Okay, we'll give that petitioner's next number and it'll be received for the purpose stated.

MR. SILVERMAN: Yes.

THE CLERK: It's Exhibit 80, Your Honor.

THE COURT: Exhibit 80.

MR. SILVERMAN: That's Respondent's Exhibit 80? Or Petitioner's -- oh, Petitioner's --

THE COURT: Yeah, Petitioner's Exhibit 80.

MR. SILVERMAN: Thank you.

THE COURT: All right, what else --

MR. KLETNICK: Your Honor --

THE COURT: -- what else do we have before we get to the deposits?

MR. KLETNICK: -- when we concluded yesterday, the respondent had computed a computation of the resolution of a business expense issue --

THE COURT: Right.

MR. KLETNICK: -- based on -- on the Court's —

THE COURT: Yeah.

MR. KLETNICK: -- intentions from the bench and we've submitted a copy to Mr. Silverman. Mr. Silverman advised us that this is unacceptable.

THE COURT: Well --

MR. KLETNICK: And -- and that he wants to reopen the --

THE COURT: -- let him make --

MR. KLETNICK: -- issue.

THE COURT: -- I mean, he'll -- he'll speak for himself. Let him -- let him speak for himself.

MR. SILVERMAN: Judge, I --

THE COURT: Yes, Mr. Silverman.

MR. SILVERMAN: -- you asked -- you asked if I have any checks to show I paid the stenographic --

THE COURT: Well now, let -- let me say this. On expenses, Mr. Silverman, we have a whole list of items there and -- oh, about 10, 12 items. Now, the Court attempted to resolve those items on --

MR. SILVERMAN: Judge, I've got so much stuff here --

THE COURT: kind of a right -- just wait a minute -- wait a minute -- on the basis of a little give and take and reasonable resolution. If -- if you're not amenable, not willing to accept the result --

MR. SILVERMAN: I'm going to respectively ask the Court --

THE COURT: -- we'd have -- we'd have no -- the Court has no objection to taking them up item by item and --

MR. SILVERMAN: -- no Judge --

THE COURT: -- allowing you everything that you can prove.

MR. SILVERMAN: -- Judge, I don't want to do that. I don't want --

THE COURT: Well then we'd -- we'd better just take it the way it is.

MR. SILVERMAN: I don't want to burden the Court, I'm overburden as it is --

THE COURT: Well I say, maybe that's --

MR. SILVERMAN: -- I barely made it this morning to Court, I came in and I was all exhausted --

THE COURT: -- oh I know, give him -- give him the towel there, where's the --

MR. SILVERMAN: -- pulling these bundles -- I don't want a towel. Judge, the telephone reduction as --

THE COURT: I can see why -- I can see why you were so successful in these injury cases -- you're -- you're an excellent pleader.

MR. SILVERMAN: Judge -- no -- no. I try to do what I think is right.

THE COURT: No, no I mean, we're -- we're talking about nickels and dimes here --

MR. SILVERMAN: I know.

THE COURT: -- these accounts and I -- a fair approximation I think was made on an overall basis, so let's let it rest there and not -- not try and get into it.

MR. SILVERMAN: Inspite of the fact --

THE COURT: Because if you get into it item by item on one, we're going to have to get into an item by item on all of them and -- and for those --

MR. SILVERMAN: I'm --

THE COURT: -- that you don' have checks, you're going to lose.

MR. SILVERMAN: -- I'm going to respectively ask the Court to increase the stenographic services, I have bills that show it's way over, even when I asked.

THE COURT: Even every year, you mean?

MR. SILVERMAN: I have bills for every year, Judge. EBT's have cost me a fortune. I have the bills, I didn't realize I had the bills. This is such a bewildering case, Judge, you don 't appreciate what --

THE COURT: All right, you submit those --

MR. SILVERMAN: I'm the only one --

THE COURT: -- submit those to the respondent and let him check them out, let's see what he has to say about them.

MR. SILVERMAN: If he'll give me those items, then I have no objection to the schedule Your Honor fixed.

THE COURT: All right, let -- let the respondent take a look -- didn't we allow the stenographic service?

MR. SILVERMAN: You -- you said if I could show you bills or checks --

THE COURT: All right, I -- did we allow that?

MR. SILVERMAN: -- I found those bills and checks.

THE COURT: Counsel?

MR. KLETNICK: I think we gave him either $120.00 or $125.00.

MR. SILVERMAN: $120.00, Judge --

THE COURT: Well take -- take -- if he has the bills for them, that's a fair --

MR. SILVERMAN: If you give me the addition of the bills, I'm perfectly agreeable those --

THE COURT: Well not addition to the $120.00, we'll give you what the bills show are --

MR. SILVERMAN: What the bills show, yes.

THE COURT: Yeah. You'd rather have what the bills show.

MR. SILVERMAN: In addition to the $120.00.

THE COURT: No, not in addition to --

MR. SILVERMAN: That's -- that's office -- very lean, very --

THE COURT: I know -- I --

MR. SILVERMAN: -- nominal, Judge --

THE COURT: -- Mr. Silverman --

MR. SILVERMAN: --a girl gets $4.00 an hour.

THE COURT: -- you can either go one way or the other, now which way do you want to go?

MR. SILVERMAN: I don't want to burden the Court. I said this morning --

THE COURT: I don't want to -- I don't want --

MR. SILVERMAN: -- and I'll say it again --

THE COURT: -- I'm here, I --

MR. SILVERMAN: -- I know you're here.

THE COURT: -- I --

MR. SILVERMAN: I don't want to burden Your Honor.

THE COURT: -- it's -- it's --

MR. SILVERMAN: I know you have plenty of other problems over here.

THE COURT: -- it's pleasant in New York right now and I've got a pleasant room and very fine dining room in the hotel and all and --

MR. SILVERMAN: It's too hot -- it's too hot.

THE COURT: -- well it's -- I'm not suffering see? Now if you want -- but if you want to take it on -- we'll either --

MR. SILVERMAN: I want --

THE COURT: -- we'll either give you the $120.00 or what your bills show. Now you think about that through the rest of the day. We've got plenty of time here.

MR. SILVERMAN: I already thought of it.

THE COURT: All right. You better add it up and see which comes out.

MR. SILVERMAN: I haven't got time.

THE COURT: Now let's take -- let's see which is the supporting schedule on the deposits?

MR. SILVERMAN: Before that, Judge, something has been left out.

THE COURT: What's that?

MR. SILVERMAN: Schedule B? They made me a single man, I lost my wife in the process of these tax audits.

THE COURT: Well we haven't gotten down to that last line, yet.

MR. SILVERMAN: We did get into it.

THE COURT: No, no, no. We're -- we're on -- that's on excemptions, you mean?

MR. SILVERMAN: Yes, sir.

THE COURT: No, we haven't gotten there yet.

MR. SILVERMAN: You want to leave it for a while?

THE COURT: Yeah, that --

MR. SILVERMAN: Okay.

THE COURT: -- comes in at the end.

MR. SILVERMAN: That's okay.

THE COURT: Unexplained deposits in banks.

MR. BRODSKY: Your Honor --

MR. SILVERMAN: That's okay, all right.

MR. BRODSKY: -- back to the Atlas issue for a moment. I have the photocopies of the original stock transfer records --

-THE COURT: All right, we'll --

MR. BRODSKY: -- from -- but before I introduce those, I also have a witness under subpoena from Burnham & Company with regard to the --

THE COURT: All right, we'll --

MR. BRODSKY: -- brokerage statements. He hasn't --

THE COURT: -- let's put the records in and then we'll put your witness on.

MR. SILVERMAN: Yesterday we were told, they were destroyed, today they got them.

THE COURT: Well let's find out -- we -- let's -- let's find out what -- what -- what the word is, Mr. Silverman.

MR. BRODSKY: The witness hasn't arrived yet, Your Honor.

THE COURT: I see.

MR. BRODSKY: If you desire the records, I'll --.

THE COURT: Okay.

MR. BRODSKY: -- put them in right now. As I indicated, I have the original books here for --

THE COURT: That's right.

MR. BRODSKY: -- verification. The -- the first record is page 1535, covering January 24th, 1961 transactions of Atlas Credit Corporation B common stock. The second exhibit consists of page 1554 from the transfer Atlas record books, which covers the transactions recorded on January 24th, 1961, the third exhibit is page 1574 from the same records which covers transactions entered on February 8th, 1961.

THE COURT: Clerk will give those numbers.

THE CLERK: That will be Respondent's Exhibit AN, AO and AP, Your Honor.

THE COURT: All right, they'll be received.

MR. SILVERMAN: I like that --

THE COURT: Now getting back to these capital gains for a minute. Which schedule number is that?

MR. KLETNICK: 22-V.

THE COURT: 22-V. 22-V -- Well, addressing myself to the respondent, how were the proceeds of these sales taken into account in determining the deposits, do we have that?

MR. KLETNICK: Are you're talking about the schedule entirely or just that one Atlas transactions?

THE COURT: No, I'm talking about all of them really, well the Atlas would be one, in other words, I would -- I mean, I would assume that we have funds here which were realized as a result of these sales and can we account for those funds?

MR. KLETNICK: The -- the funds resulted from this were traced down and eliminated in the bank account deposit analysis.

THE COURT: Well do we -- do -- let's say I'm from Missouri, let's -- let's --

MR. KLETNICK: Pick one out if you will?

THE COURT: -- well, let's take the Atlas Corp. -- Corp. A -- Atlas Corp.B. those are the ones that are apparently in dispute.

MR. KLETNICK: Do you want us to put a witness up there, Judge? And have him explain it?

THE COURT: Yeah let's -- well do we have a schedule?

MR. KLETNICK: We have -- we have copies of the documents and we can show where the checks went and then we can look in the bank records and we can --

THE COURT: I see.

MR. KLETNICK: -- we can trace them --

THE COURT: Well the reason I asked that, is I noticed on a lot of other items over in -- over in your right hand margin, the actual deposits are tied in with the -- with the income figures. And on 22-V, we don't seem to tie these in with anything. It raises a problem because here we have a hybrid method, really. We have a combination of taking actual omissions of income and taking the bank deposits. Now, it -- when you adopt that route, you have to make sure that they aren't duplicating the same item. That's -- that's the thing that I --

MR. KLETNICK: I think the three areas are, Your Honor, as you point out , the capital gains, the dividends and professional receipts. And I think that we can show the Court that we sealed off all those receipts from the unexplained bank deposits that we ultimately picked up and if the Court wants, I can put the agent up on the stand and have him explain exactly how they did it.

THE COURT: All right, let's have the agent -- yeah, the reason I raise that question is that it may well be that -- it may make no diference if they've given you credit for the cash, why -- if -- if you say you didn't have that cash then maybe -- maybe your unexplained deposits are going to go up, is that -- is that the result, or isn't it. See that --

MR. KLETNICK: That's -- in some cases, it would be, in the Atlas, I believe that the money flow through is brokerage accountant, ultimately was distributed to him and so it didn't result in any --

THE COURT: Well if it was distributed to him, he's either got it under the mattress or he put it in the bank somewhere, didn't he?

MR. SILVERMAN: Every check that came from a broker's office went into the bank, they got records, they can look back on the checks. I've got the back of the checks --

MR. BRODSKY: We have -- we do have --

MR. SILVERMAN: -- the cancelled checks -- each deposit, each check --

THE COURT: Well now let's talk about this Atlas A and Atlas B. If -- if you have the check that he received here for $6,392.00 -- wait a minute, $9,392.16, that would show that there was such a transaction, if he endorsed that check, is that right? Do we have that check?

MR. KLETNICK: Let's -- let's put the agent up on the stand.

THE COURT: All right.

MR. KLETNICK: And have him explain this.

THE COURT: [illegible]'s -- let's have him explain it.

MR. KLETNICK: We call Cal Wallace again.

THE COURT: You're still under oath. I think the -- I'm not being critical of the agents because I think they did a very, very excellent job here, Mr. Silverman. It's too bad we can't send you a bill for this -- all of this work too.

MR. SILVERMAN: Be my guest.

CAL WALLACE,

recalled as a witness, having been previously duly sworn, took the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KLETNICK: (Further)

THE WITNESS: On the brokerage statements from Burnham & Company in -- starting with January, 1961 --

THE COURT: Now, are those in evidence here?

MR. KLETNICK: No.

THE WITNESS: Two of them were previously put into evidence and there's one additional, I believe it's been marked --

MR. BRODSKY: Your Honor -- Your Honor they were --

THE COURT: And this is AH, is that the one we're looking at, January 24, '61? Okay, we show Frank Silverman, certificates surrender.

MR. SILVERMAN: What number is that?

THE COURT: That's number -- page number 1535. Atlas -- this is Atlas credit sheet that you have?

THE WITNESS: No, these are the --

THE COURT: Oh, I see.

THE WITNESS: -- the Burnham & Company brokerage account. Two of the ones I'm looking at were entered in previously and the third one has not yet been entered.

MR. SILVERMAN: Judge, this is not in evidence.

THE COURT: Now which -- what's the exhibit of the one that was entered? Those slips here -- here we are --

MR. BRODSKY: That would be Exhibit AD, Your Honor.

THE COURT: Huh?

MR. BRODSKY: Exhibit AD.

THE COURT: Exhibit AD.

MR. BRODSKY: Which was admitted subject to further testimony by representatives of Burnham & Company.

THE COURT: I don't think I admitted that -- that's not admitted. That's just in for identification. Well why don't you just tell us generally what you did -- how -- how -- how do you know that the -- let's take the exhibit -- give the witness Exhibit 22-V. And let's take 1200 shares of Atlas Credit Corp. in the third line there was sold for $9,392.16, January 20, 1961.

THE WITNESS: In looking at the brokerage account, we have a sale of 1200 shares of Atlas Credit Corporation B for that price, then if you follow through the balance of the brokerage statement, he eventually receives the money through checks paid to him and deposited in his -- either other brokerage accounts or a bank.

THE COURT: I see. Now, do you have those checks?

THE WITNESS: Yes, we do.

THE COURT: I see, well let's get those checks. Now how did it -- in other words, was there some -- was there something that made the amount more or less than $9,300.00 --

THE WITNESS: Yes, on to -- he eventually, you know, had-maybe five, six transactions each month.

THE COURT: Yeah.

THE WITNESS: And it wasn't until like three months later that he had a balance of zero in his account.

THE COURT: So that these funds actually never came out of the account then?

THE WITNESS: Up -- up until like three months, but the balance, you know, if you take the stocks he bought and other stocks --

THE COURT: Well all right, now so he ends up with a balance of zero in his account --

THE WITNESS: Right.

THE COURT: -- is that right? Now --

THE WITNESS: It's $27.00.

THE COURT: All right. Now which stocks is he purported to have purchased to use up this $9,000.00 plus the other amounts? Do they appear on schedule 22-V?

THE WITNESS: He bought Budd Company.

THE COURT: Did you buy Budd Company?

MR. SILVERMAN: Which I paid the check for the -- for the Budd Company stock, I did.

THE COURT: Well Mr. -- you wouldn 't --

MR. SILVERMAN: Not -- not -- not with these funds. Or the --

THE COURT: Well, Mr. Silverman, if you bought Budd Company at the time that you had a balance in the account, they're not going to bill you for -- for the purchase, they're going -- you give him a check for what your net amount due is, isn't that right?

MR. SILVERMAN: I never got credit for the Atlas stock and I reported the Atlas stock and never sold --

THE COURT: Well suppose the -- suppose the records of Burnham & Company show otherwise?

MR. SILVERMAN: Physically impossible.

THE COURT: All right, let's me see that --

MR. SILVERMAN: I only bought one class of stock, Judge --

THE COURT: -- let's see the Burnham sheet here --

MR. SILVERMAN: -- I bought only --

THE COURT: -- bearing in mind that we still -- we still have a question as to the identification of these documents but this shows the sale of the 1200 shares of Atlas B --

MR. SILVERMAN: Judge, it does not show a sale, it shows shares, instead of your numbers.

THE COURT: No, no -- wait a minute -- wait a minute, this actually shows the --

MR. SILVERMAN: Oh, I'm sorry, I -- I'm looking at a different exhibit.

THE COURT: All right, on January 20th, according to this Burnham -- alleged Burnham statement, in account with Burnham by arrangement with Zuckerman, you sold -- here's a check paid $2,000.00 -- that was with a prior transaction, then Kingston Products, you bought some Kingston Products. Then you sold Atlas Credit and realized the nine-thousand odd. As of that time, you had a credit balance of $10,099.10. Then later in January, they received some more Atlas, they received some additional Atlas B. And let's see -- then you bought Budd & Company for $3,246.00. You bought another 100 Budd for $1,623.00. Who is Irwin B. Silverman?

MR. SILVERMAN: My son.

THE COURT: All right, you transferred $490.50

to your son.

MR. SILVERMAN: No, I never -- I never did that.

THE COURT: And then there's another Standard Packaging, you bought some of that, didn't you?

MR. SILVERMAN: I bought some of that, yes.

THE COURT: All right, that was $2,493.00. Crescent Pet -- Crescent Petroleum, Federal Pacific Electric, Daitch Dairy, Kingston Products -- after making those purchases, and giving you credit for two more sales of Atlas, you were down to $2,576.42. Then you bought some more Kingston Products, Kingston Products, you sold some -- or you delivered -- and you bought some Ashland Oil -- sold some Ashland Oil and bought some Lefcort Realty, you -- Dayco -- you sold -- you paid a check for $1,000.00 and you paid a check for $500.00 and -- and you have an account -- Lefcort Realty -- account adjusted on purchase, check paid, $3,000.00.

THE WITNESS: We have those checks that you named.

THE COURT: Yeah. Check paid, $1,571.20. Now let me ask the witness, it looks as if these checks were issued because there had been a mistake, I don't see how you can account for it any other way. Isn't that right?

THE WITNESS: Pardon?

THE COURT: I don't know how you can account for it any other way.

THE WITNESS: If you add and subtract those columns, it will be a running total balance of which were offset and what he bought and what he sold.

THE COURT: But they say these -- these amounts were charged to his account. There's one-thousand, five-thousand, three-thousand, isn't that right?

THE WITNESS: Right. They -- when they charge it to his account, it means that they're reducing what they owe him by that amount.

THE COURT: By that amount.

THE WITNESS: Right.

THE COURT: Well what does that represent then? Was that withdrawals by Mr. --

THE WITNESS: Those were withdrawals by Mr. Silverman.

THE COURT: And you have the checks for those withdrawals?

THE WITNESS: Yes.

THE COURT: I see. That brought you down to a balance of $27,000.00 (sic), is that right? How how do we get $27,000.00 (sic) here?

THE WITNESS: It's $27.00, I believe.

THE COURT: Oh. I see. That's -- that's not a zero there, that's a CR, I guess for -- now Mr. Silverman?

MR. SILVERMAN: Yes, Judge.

THE COURT: It would appear from these statements and if the respondent has the checks, I don't know how there can be -- they were cashed by you, there can be any question about it that you received the funds from the sale of the Atlas Credit Corporation B stock. And it just has to be that way.

MR. SILVERMAN: I never owned it, I cannot sell it.

THE COURT: Well you owned it because it was certainly in your account and you owned what was in the account.

MR.SILVERMAN: I never owned it, I never sold it.

THE COURT: And you sold it and received the proceeds.

MR. SILVERMAN: And I never received the proceeds of it, Judge.

THE COURT: I'm afraid that -- that there's no way in the world we can get around that Mr. Silverman. It's there as a matter of record. And the checks -- if you received the proceeds because you received the Kingston and -- and the stocks that you bought and -- and you received the balance in cash.

MR. SILVERMAN: I paid for the Kingston. I paid for that stock.

THE COURT: All right, well do you have those checks?

MR. SILVERMAN: I didn't -- they didn't come out of -- of these transactions.

THE COURT: Well that's -- that's what your account shows Mr. Silverman. That's -- now it may be we're -- we're talking about 15 years ago, your memory may not be that good --

MR. SILVERMAN: I'll have to --

THE COURT: -- but --

MR. SILVERMAN: -- I'll have to dig up the -- the slips of sale -- of purchases and the checks that I paid for the Budd Company stock --

THE COURT: -- well if --

MR. SILVERMAN: -- and bring them to Court.

THE COURT: -- well what about -- if -- if you have those, maybe that would -- maybe the account's in error, I can't believe that -- now we get down to the point so the -- the $1,000.00 withdrawals that are shown on that statement, you did account for those as deposits, is that --

THE WITNESS: Yes, we eliminated them --

THE COURT: -- identify them?

THE WITNESS: Right.

THE COURT: Okay, well we can -- thank you. Now, then Mr. Silverman, now --

MR. SILVERMAN: May I have a copy of that statement that the witness testified from?

THE COURT: Yeah, we'll make some of those. Those are the ones we want to put into evidence as soon as we can get them properly identified. I -- I am puzzled Mr. Silverman because I'll say in all honesty that where you have been caught with your hand in the cookie jar, I -- I don't see any great effort to -- not to admit it here. So when -- when -- when we're not dealing with a tremendous amount here with the capital gain rates and all and why you admit all of your other misdeeds and -- and still don't acknowledge this one, puzzles me.

MR. SILVERMAN: Judge, I never owned the B stock --

THE COURT: Yeah, we -- we --

MR. SILVERMAN: -- I will show you slips, I only bought the A stock. I never got stock dividends on the B stock or cash dividends of B stock --

THE COURT: Well that's --

MR. SILVERMAN: -- how they showed up in my name, I don't know. How these transactions took place, I don't know.

THE COURT: -- maybe somebody -- maybe your son was doing it in your name.

MR. SILVERMAN: No, my son didn't do anything of the kind.

THE COURT: Well he got a check from out of here didn't he?

MR. SILVERMAN: I might have -- no, I didn't give him any checks. Never gave him any -- let him show me check.

THE COURT: We better --

MR. SILVERMAN: I know my boy's name. Let me see the --

THE COURT: -- we better get all of the package on that one together so when the man from Burnham comes, we can -- we'll -- but anyway, we are -- based upon that, it would appear that the -- the amounts in question were taken into account and -- in determining your bank deposits so on your fees, most of them are actually identified, occasionally, there's one in them. Let me ask the agent, you don't need to come up. Bingham on page one of 20-T, you don't show a deposit on that. Gomez, why is that?

MR. WALLACE: If -- if we were unable to -- to find a deposit or -- or if we didn't have the check --

THE COURT: Yeah, well, the problem the Court has with that is that I don't know how you can -- you can combine these two methods without -- you've got unaccounted for income on schedule 20-T and -- and you almost have to -- going to have to net one against the other, I would think because --

MR. WALLACE: There's only a few --

THE COURT: There are only a few, I mean, it doesn't make that much difference, but --

MR. KLETNICK: We've effectively sealed off every deposit --

THE COURT: Well --

MR. KLETNICK: -- the one or two that you picked out --

THE COURT: -- if the cash deposits, this could have been a cash deposit, I don't know.

MR. KLETNICK: There's very little cash --

THE COURT: Yeah if -- we're not dealing -- if we were dealing with expenditures, of course, we'd have to but here we're dealing with kind of a hybrid actual and deposit method.

MR. KLETNICK: Our Schedule 24 shows each deposit to each [illegible] account and whenever there was a cash deposit, as have it noted. And --

THE COURT: Were they given --

MR. KLETNICK: -- there were very few of them if I recollect --

THE COURT: -- were they given petitioner credit for all cash deposits?

MR. SILVERMAN: They did not, Judge.

THE COURT: I think we've got to give him credit for the cash deposits we're going to charge him with unreported income.

MR. KLETNICK: I don't think that we do, Your Honor.

THE COURT: Huh?

MR. KLETNICK: I don't think that there are that many of them, but I don't --

THE COURT: Well the difference is that I'm up here and you're down there, see. So to the extent that we have that disagreement, why -- what I think goes, isn't that right? I've had a hard time getting you to understand that, but I think in time you'll learn, see? Now, let's see -- well, let's get to these unexplained deposits Mr. Silverman and we -- we have -- we have our supporting schedule which is --

MR. KLETNICK: 24-X, Your Honor.

THE COURT: 24-X -- 24-X.

MR. KLETNICK: That's in connection with 23 which is a summary of that.

THE COURT: That's right. Now, we'll let you tell us what you think of those Mr. Silverman. 23-W is it?

MR. KLETNICK: Right.

THE COURT: 1960 --

MR. SILVERMAN: I can't find the 1960, I've got the '61 --

THE COURT: East River Savings Bank.

MR. SILVERMAN: What bank?

THE COURT: The first one is East River Savings Bank.

MR. SILVERMAN: East River Savings --

MR. KLETNICK: Your Honor, the bank -- respondent prefers to start with '61 through '65.

MR. SILVERMAN: Now, just a moment -- just a moment.

THE COURT: Why? Why would --

MR. SILVERMAN: East River Savings, you want?

THE COURT: -- why should respondent -- why start with '61?

MR. SILVERMAN: Start '61?

THE COURT: No, I say why -- why --

MR. KLETNICK: 61 --'61 through'65, we have more information on Mr. Silverman's bank -- his bank transactions.

THE COURT: I know -- why not just take them the way they come. We take the bad with the good. I'm beginning to think you must think I'm dumb or something. I thought when I caught you with that certificate, I impressed you with -- there's no -- there's no substitute for 40 years of this crazy business, see?

MR. SILVERMAN: I believe it, Judge.

THE COURT: All right, let's see here -- we got return, $800.00.

THE COURT: Yeah. $800.00. How do you know it's a Pan Am, do you have something there to show it, Mr. Silverman?

MR. SILVERMAN: If Your Honor will look at the exhibit I submitted in Court, you'll see it was deposited in ths bank.

THE COURT: Yeah, that's right. Well didn't you have an exhibit on Pan Am?

MR. SILVERMAN: Yes, we did, Your Honor.

MR. KLETNICK: The dividends paid by Pan Am, Your Honor was-- was -- the first one was deposited 2-11-60 and it was in the amount of $180.00 and it was deposited in the Merchant's Bank and -- we gave him credit for it and we'll get the check out now.

MR. SILVERMAN: It was $200.00.

THE COURT: All right, that's what you have on your sheet, Mr. Silverman. It wasn't -- this isn't Pan Am. At least you don't claim it's Pan Am.

MR. SILVERMAN: I thought it was Pan Am.

THE COURT: Pan Am, number 200 went into -- there was one amount that went into account 37218 and one went into account in -- and it doesn't say -- in '60. One went into account 480041 in '61. But February 10, '61 --

MR. SILVERMAN: That's New York State Unemployment and New York State --

THE COURT: No, that's a Pan Am one too, so that's -- that should have gone into East River . These are only the that's '61. Now, '60 -- let's go down '60. So the $200.00 is not accounted for by Pan Am.

MR. SILVERMAN: Well, just hold that in obeyance please, I'll get --

THE COURT: All right.

MR. KLETNICK: Here's the Pan Am check.

THE COURT: Yeah.

MR. KLETNICK: If the Court wants to see it.

THE COURT: Yeah.

MR. SILVERMAN: Yeah, I admit I got it.

THE COURT: And the respondent was unable to ascertain the source of the $200.00, is that right?

MR. KLETNICK: Right.

THE COURT: Okay. All right, 2-10-60, two-hundred --

MR. SILVERMAN: This is New York State paid -- I received for my -- workmen's compensation board.

THE COURT: That's not the Pan Am check?

MR. SILVERMAN: No, no. that's -- that's for work.

THE COUFT: Well let's see that check.

MR. SILVERMAN: I have -- you want me to give you this check?

THE COURT: Yeah. No, I mean the check that you say is -- you mean, this $200.00 is the compensation?

MR. SILVERMAN: Well I worked -- worked for the City of New York.

THE COURT: Yeah, do you have the check for that?

MR. SILVERMAN: I'll try to find it.

THE COURT: That'll show whether it's been deposited or not.

MR. SILVERMAN: No, I don't have the check, all I got are these copies of stubs -- the checks -- Albany's got --

THE COURT: All right.

MR. SILVERMAN: -- I can't get those checks.

THE COURT: Now, let me ask the respondent, how do we -- how do we tie in Mr. Silverman's salary income or anyting with the --

MR. KLETNICK: Okay, for the years '61 through '65, our agents went through and picked out the specific amount -- they identified Mr. Silverman's salary checks by the amount and eliminated them. The eliminations are approximate to the net salaries.

THE COURT: I mean, how -- how --

MR. KLETNICK: So for '61 through '65 --

THE COURT: did they eliminate them?

MR. KLETNICK: By going through each bank account and picking out the deposits. They traced them through the bank accounts. Now for '60 --

THE COURT: We have the Pan American, Mr. Silverman has given us the Pan American checks here and he accounts for all of those. I think our problem with this approach is that after we have accounted for all these dividends and these capital gains and all like that, where -- where -- I'm not so sure that we arrive at a situation that would even justify using the bank deposit.

MR. KLETNICK: Your Honor, for the years '61 to '65, that's not correct --

MR. SILVERMAN: We --

MR. KLETNICK: -- for the year '60, there is some additional eliminations that we'll have to make when Mr. Silverman gives us the information because he hasn't given it to us.

THE COURT: Well you --

MR. KLETNICK: For example, the salary, we -- we admit that there should be some eliminations for salary, but we just don't know what the amounts are.

THE COURT: All right, that's number one. So we have to have salary eliminations. That may be for all years, is that right?

MR. KLETNICK: No, salary is eliminated in the other years.

THE COURT: Okay --

MR. KLETNICK: Also --

THE COURT: Well then -- well let's pass over number '60 with the understanding then, we may throw it out. Is that it?

MR. KLETNICK: It's not like that, no. There's still a substantial deficiency left after -- after you make these eliminations.

THE COURT: I see.

MR. KLETNICK: We -- You Honor, we just don't have the information, Mr. Silverman hasn't give it to us --

THE COURT: I know, the problem --

MR. KLETNICK: -- '61 to '65 are criminal years -- and we had --

THE COURT: -- the problem with that is counsel though is, that when you start getting into the hybrid method like this, you've got to be very careful,you could have just taken the bank deposits and -- and -- and gone on that basis or --

MR. KLETNICK: Well, that's not what we did, Your Honor.

THE COURT: -- we've got his settlements and they -- they show what he's -- what his income was from his --

from his practice, now we had -- we've got his dividends and we've got his interest, now unless what -- what other sources of income did the man have if we --

MR. SILVERMAN: I had these case I settled, I had the dividend and interest income, I had the State of New York, every two weeks, I received a check. That was my only source of income. And client's funds that were in trust to me in escrow which I have the cancelled checks.

THE COURT: Yeah, but you wouldn't be putting those in this savings account would you?

MR. SILVERMAN: I -- Judge, I went to the nearest bank I could because I was working full time and I had limited time during my lunch hour, savings --

THE COURT: But if he had had one account that was designated client's funds or something --

MR. SILVERMAN: I have the -- the -- the --

THE COURT: I'm not saying that you spent the client's money or anyting, but I'm just saying that --

MR. SILVERMAN: I had the special Merchant's Bank account where I have deposited escrow funds which I returned later on. I may have deposited some money in the Chase-Manhattan and then paid out of the Chase-Manhattan because it was nearer to the office, nearer to my job. I worked at 50 Park Place, Chase-Manhattan was on Broadway and -- Boradway and N Street, right around the corner.

Very convenient -- walking distance. It was very close, so I didn't waste too much time. That was the purpose of putting it in the bank. Or the Franklin --

THE COURT: Well now, you -- we've eliminated out of the -- that's taking '60, we've eliminated -- there's no eliminations for salary in 1960. So --

MR. SILVERMAN: Well I worked and started January the 14th --

THE COURT: -- so we'll have to work that out. That's -- that's going to have to be worked out. Now, for nineteen -- let's take nineteen --

MR. KLETNICK: That assumes that Mr. Silverman deposited it.

THE COURT: Yeah.

MR. SILVERMAN: Of course I did.

MR. KLETNICK: If he'd tell us the amount of the checks --

THE COURT: Well, I know but I mean -- I know that --

MR. KLETNICK: -- we could check it out.

MR. SILVERMAN: Mr. Kletnick --

THE COURT: -- but we've got to either -- we've -- we've got to either go on -- on a one basis or another one, now I wish --

MR. SILVERMAN: You -- you gave me credit -- on the what you reported, I just wanted to see whether they gave you what you reported.

MR. SILVERMAN: No, the salary from the State of New York, I'm talking about. That -- it's in my W-2, I'm going to pick it up and show it to you.

MR. KLETNICK: $4,574.00 --

MR. SILVERMAN: Oh, it's more than that.

THE COURT: Oh, you've allowed him more than that. That's --

MR. SILVERMAN: More than that.

THE COURT: It's one page.

MR. KLETNICK: Oh. $6,035.50.

MR. SILVERMAN: It's more than that, Judge.

THE COURT: Well it's --

MR. SILVERMAN: I made more than that.

MR. KLETNICK: That's -- that's net after taxes.

MR. SILVERMAN: After taxes --

THE COURT: You have to deposit it before you pay your taxes. Now if you're going to allow him net --

MR. KLETNICK: Withholding taxes.

MR. SILVERMAN: No, they had withholding tax, Judge.

THE COURT: I see --

MR. SILVERMAN: State of New York took it off every two weeks.

THE COURT: Okay, that's not after withholding.

MR. SILVERMAN. That's right.

THE COURT: Okay, well then that's all right, isn't it, Mr. Silverman?

MR. SILVERMAN: I -- I made over $8,000.00.

THE COURT: Well they -- they got --

MR. SILVERMAN: $8,600.00, I thinkand change.

THE COURT: -- they got seven -- they got -- they got $3,759.00 on one sheet. And $4,573.95 on the other -- no, they don't -- $4,573.95 is all the Court can identify for --

MR. KLETNICK: The $8,070.32 and the $290.87, they're -- these columns weren't added up inadvertently.

THE COURT: Well now, on -- on the first page, you have $4,573.95, right?

MR. KLETNICK: Right. And there's more items on the first page.

THE COURT: Where?

MR. KLETNICK: On --

THE COURT: I mean for salary.

MR. KLETNICK: Right.

THE COURT: That's --

MR. KLETNICK: The $290.87 that --

THE COURT: -- oh, this isn't -- there's no total?

MR. KLETNICK: Yeah, it's not -- it's inadvertently not totalled.

THE COURT: So we've got $300.00 roughly, $1,100.00 and $50.00 --

MR. KLETNICK: It's $6,035.14, roughly.

THE COURT: $6,035.14

MR. KLETNICK: Right, unless I added it wrong, in calculating.

THE COURT: All right. Now that's the total of what -- net of what -- is that the net amount? Less withholding?

MR. SILVERMAN: Judge, I received from the State of New York, $8,244.85 for 1960.

THE COURT: And less -- '61, we're talking about now.

MR. SILVERMAN: Oh, I was going to give you the figure of sixty -- I'll get '61

THE COURT: Yeah, yeah, because '60, we don't have anyting, he's going to have to give -- make an adjustment. Let's take '61.

MR. SILVERMAN: '61 is much -- much higher -- much more.

MR. KLETNICK: Your Honor, if you take out the Federal Taxes, it would come to $8,218.23 --

THE COURT: All right.

MR. KLETNICK -- but then, there's New York State Taxes and --

THE COURT: Were they withheld though.

MR. KLETNICK: Pardon me.

THE COURT: Were they withheld?

MR. KLETNICK: Yeah, I think they were withheld. Mr. Silverman showed us a statement --

THE COURT: Well I -- I'll tell you, you have your net -- you have your statement from your employer for the year '61, Mr. Silverman?

MR. SILVERMAN: I have it attached to the tax return.

THE COURT: Oh is it, well let's see.

MR. SILVERMAN: No, I've got the -- I haven't got it. I have it someplace, I don't know where.

THE COURT: Well let's start at the end and work back. See if we can get a key to this.

MR. SILVERMAN: Yeah, I got '65 --

THE COURT: Let's start in '65. Let's see, there's one, two -- two pages of '65.

MR. SILVERMAN: I got '65, yes.

THE COURT: Now you have totals there, it totals twenty-five-hundred -- twenty-four-fifty-one account and seventy-seven-sixty-seven, that's $10,000.00, $11,000.00 -- oh, about $10,200.00. Is that -- is that what you have for '65 net, Mr. Silverman?

MR. SILVERMAN: I can't find any of that.

MR. KLETNICK: His total salary that year was $13,700.00.

THE COURT: I see, well --

MR. SILVERMAN: No sir, my total salary was $18,000.00 --

MR. KLETNICK: It's on your return.

MR. SILVERMAN: -- wait a minute, $11,000.00 -- just a second -- $11,643.00 and change.

THE COURT: For '65?

MR. SILVERMAN: Sixty -- in 1963, I got.

THE COURT: I'll tell you what let's do, let's -- let's do it this way. Let's -- let's first let the agent take the stand and let him explain to us just what he did in all of these schedules and how he arrived at each line thereof. And we'll start with either 23-W or 24-X, which ever you feel would be the best to start with. 23-W would --

MR. SILVERMAN: Yes, yes, '63.

THE COURT: -- be the one to start with, that's correct.

DIRECT EXAMINATION

BY MR. KLETNICK (Further)

THE WITNESS: 23-W was made as a master summary of 24-X, it was made --

THE COURT: 24-X, that's right.

THE WITNESS: -- we started with 24-X.

THE COURT: Now let me -- let's take the top line. The top line is -- that represents the total deposits for the year 1960 and the accounts designated, is that correct?

THE WITNESS: This is on 23-W?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: All right, and then you deducted from that line, items shown in the -- under the heading less?

THE WITNESS: Yes.

THE COURT: And -- now let's see for example, that less stock brokerage, $1,744.32. Where did you get that from?

THE WITNESS: That was a transfer from a brokerage account.

THE COURT: Okay, now can you tell us what that one is?

THE WITNESS: Returned to the East River account 3374 on 4-25-60, he -- Mr. Silverman deposited $1,744.32 and it came from the J.A. Winston & Company brokerage account.

THE COURT: All right. Now, what happened to the withdrawals from the B[illegible]ham account then? Was that in 1970? I mean 1960?

THE WITNESS: No, they were in 1961.

THE COURT: Okay. Now on the dividends, deposited what does -- what schedule does that tie in with?

THE WITNESS: That'll tie in with the dividend receipt schedule --

THE COURT: That we --

THE WITNESS: -- that --

MR. KLETNICK: That's 8-H and a schedule subsequent to that.

THE COURT: All right, now does the total dividends that we have given credit for equal the total dividends we're charging him with?

THE WITNESS: No, he did not always deposit his dividend checks.

THE COURT: How do we know that, do we have all the dividend checks?

THE WITNESS: We had the dividend checks -- we would trace them through -- we would examine the dividend check for which bank it was cashed at or deposited at. And then we would go that account on the date that it was cancelled and look for a deposit that day.

THE COURT: I see.

THE WITNESS: And there was not always a deposit.

THE COURT: the only time that you did not give the petitioner credit for dividends was when the check showed that it was cashed and there was no corresponding credit on any -- on the account in the bank where it was cashed?

THE WITNESS: Right.

THE COURT: All right. Now were any of these deposits -- cash deposits?

THE WITNESS: In -- for the dividends?

THE COURT: No, I mean, what do you do -- what -- assume the petitioner deposited $500.00 in currency, what did you do with that? That's unidentified.

THE WITNESS: That would be unidentified because we couldn't identify where -- what source it had come from.

THE COURT: Well I think we're going to have -- we -- we are going to have to offset one by the other.

MR. SILVERMAN: Judge, the -- these from the savings accounts -- for the checking account because I've got those withdrawal slips from the various savings banks to show where the money came from and where it went to. There was no outside money other than the client's monies, settlement cases monies, insurance premiums from clients, I'm also an insurance broker, I wrote the policies of insurance, they would charge me with commissions. But I, yesterday conceded to ' commissions. But the money -- before you get commission, you have to receive the premium. Those monies also went into the bank.

THE COURT: Yeah, but then you pay the premium to the insuror, so you would have --

MR. SILVERMAN: That's right, I paid the premiums out of the account.

THE COURT: -- so you would have a check showing the withdrawal of premiums.

MR. SILVERMAN: I have -- I have checks. I have them, sure.

THE COURT: Have you seen any of those witness?

MR. SILVERMAN: I have bills, I have checks, yeah.

THE WITNESS: We had some statements from the brokers he did business with and where we were able to --

MR. SILVERMAN: You mean the brokerage agencies, I was broker, yes sir.

THE WITNESS: -- brokerage agencies and where we were able to find that he had paid it, we eliminated it. If you look at the first sheet for 1960, under miscellaneous, it's quoted A, you'll notice is a $160.38 elimination for an insurance premium, he collected and then turned over to an agent. In that -- in that case then, then also in B, over in the Merchant's Bank, there was another check for $210.00 that we we able to identify had been through the brokerage agency -- we were able to identify -- had been deposited in one of his accounts and then turned over to them.

THE COURT: Now, let me ask you Mr. Silverman. Why did you have for example, three different accounts -- four different accounts at the East River Savings Bank?

MR. SILVERMAN: I don't know. I had -- I think one was in trust to my boy -- no, I don't think so. I -- I think -- yes, I'll tell you why. I originally opened an account in East River Savings Bank, they were on Delaney & Broadway. I maintained that account. Then at 110 William Street, was closer to my job, so I opened an account over there. That might have been the reason for the account for the numerous accounts I opened at that bank. For no other reason. While we are with the Care Agency, with -- with the insurance brokerage agency, I got some checks that I'd like to exhibit to the agent -- or to the witness.

THE COURT: All right, well suppose we -- suppose we take a recess here until about -- well -- we'll come back in -- not later than say quarter to twelve and find out how you -- what type of progress you're making, but the Court's going to recess and -- and give the parties an opportunity to go over the checks that Mr. Silverman has here now. So, we'll take about a 45 minute recess here.

THE CLERK: All rise.

(Recess)

THE CLERK: Be seated, Court is now in session.

THE COURT: I believe we have a couple of witnesses that we want to --

MR. BRODSKY: That's correct, Your Honor --

THE COURT: -- take up, fine.

MR. BRODSKY: -- a witness from --

THE COURT: Right.

MR. BRODSKY: -- Burnham & Company.

THE COURT: Let's -- let's take those up.

MR. BRODSKY: I call Mr. Louis Mazzola.

THE CLERK: You do solemnly swear the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. MAZZOLA: I do.

THE CLERK: Be seated, state your full name and address for the record.

MR. MAZZOLA: My name is Louis Mazzola. I reside at 393 Winchester, Staten Island.

DIRECT EXAMINATION

BY MR. BRODSKY:

Q Mr. Mazzola, whom are you employed by?

A Drexel Burnham & Company.

Q How long hav you been there?

A Thirteen years.

Q And what are your duties there?

A I work with the assistant to the vice-president in the customer service department.

Q Is Drexel Burnham & Company the successor to the firm known as Burnham & Company?

A Yes, it is.

Q Did Burnham & Company ever have an arrangement with a brokerage firm named Zuckerman and -- Zuckerman and Smith and Company?

A Yes, it does.

Q What was that arrangement?

A We handle all paper work for Zuckerman and Smith customers.

Q And under that arrangement with Zuckerman and Smith and Company, would Burnham & Company mail monthly brokerage statements to customers of Zuckerman and Smith and Company?

A Yes.

Q At the time the statements were mailed, would Burnham & Company retain copies of the statements?

A Yes, we do.

Q Does Drexel Burnham & Company still have copies of these statements dating back to 1961?

A We do.

Q Do you recognize this document marked Respondent's Exhibit AQ?

A Yes, I do. It's January-February and March statements, 1961 for Frank L. Silverman, by arrangement with Zuckerman and Smith.

Q What are these sir, are these copies --

A These are carbon copies of the originals that are sent to the customer, each month.

Q Your Honor, I offer Respondent's Exhibit AQ into evidence.

THE COURT: Be received.

MR. SILVERMAN: I'm going to object to them, Your Honor.

THE COURT: Objection overruled.

MR. SILVERMAN: These are copies, not originals.

THE COURT: That's right, the originals went to you.

MR. SILVERMAN: He can't testify that these were records -- they were kept in the ordinary course of business --

THE COURT: Well let me ask him --

MR. SILVERMAN: -- as far as he knows.

THE COURT: -- were these kept in the ordinary course of business?

THE WITNESS: Yes, they are.

THE COURT: They are, that's right.

MR. SILVERMAN: I still object to the copies of those records, Judge.

THE COURT: These -- these are the original records of the -- of the brokerage firm. They are the actual retained originals, Mr. Silverman --

MR. SILVERMAN: He testified they were copies.

THE COURT: -- now you're going to make me believe that you're trying to conceal something here --

MR. SILVERMAN: I'm not -- no --

THE COURT: -- if you keep on objecting like this, now really -- really.

MR. SILVERMAN: -- he didn't testify those were original copies.

THE COURT: These are -- the -- you -- it's the carbon copy of what was mailed out, is that --

THE WITNESS: That is correct.

THE COURT: -- that's correct, Mr. Silverman. That's right. So they'll be received.

MR. BRODSKY: I have no further questions of this witness, Your Honor.

THE COURT: Any cross-examination Mr. Silverman?

MR. SILVERMAN: No, Judge.

THE COURT: Thank you, you may step down.

(Witness Excused)

MR. KLETNICK: Respondent's next witness is Mr. Donato.

THE CLERK: Raise your right hand. You do solemnly swear that the testimony you are about to give to the Court in this case shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. DONATO: I do.

THE CLERK: Be seated and state your full name and address for the record please.

MR. DONATO: Nunzio Donato, N-u-n-z-i-o D-o-n-a-t-o. 1828 49th Street, Brooklyn.

NUNZIO DONATO,

called as a witness, having been duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. KLETNICK:

Q By whom are you employed?

A The Internal Revenue Service.

Q For how long have you been employed by the Internal Revenue Service?

A Thirteen years.

Q What is your position?

A Disclosure officer.

Q Okay, prior to that, what was your position?

A I've been a group manager and Internal Revenue Agent.

Q Okay, for how long were you a Revenue Agent?

A For approximately 6½ years.

Q Were you the Revenue Agent that conducted the original examination of Frank Silverman for the year 1960?

A Yes, I was.

Q Was that prior to the issuance of the Statutory Notice of Deficiency for that year?

A Yes, it was.

Q I show you the documents marked for identification as Respondent's Exhibit AH and I'm going to ask you to identify them.

A Yes, they are form 872's which are used to extend the statutory period of limitation.

Q Did you prepare the portion of each of these documents of both Frank Silverman's signature?

A Yes, I did.

Q All four of them, right?

A Correct.

Q Okay, after you prepared each one, where did it go?

A They were either mailed or hand delivered to Mr. Silverman.

Q After that, what happened next?

A After receiving them back signed by Mr. Silverman, they were date stamped and given to my group supervisor who would then execute them on behalf of the Government.

Q Did you then -- were you the individual that placed these documents in -- in the administrative file?

A Yes, I was.

Q I offer these in evidence.

THE COURT: Be received.

MR. KLETNICK: Mr. Donato, can you turn your attention to the -- to the form 872 which was executed by the group supervisor on April 13, 1964?

A Okay.

Q Can you read the date that the statute was extended to?

A June 30, 1965.

Q Okay, paying particular attention to that date, could you identify the -- the numbers that are on there?

A Yes. June 30 of 1965.

Q And that's the way you make a file, is that correct?

A That's correct.

Q Okay. I have no further questions.

THE COURT: All right. Any cross-examination?

MR. SILVERMAN: Yes, Your Honor.

CROSS EXAMINATION

BY MR. SILVERMAN:

Q Mr. Donato, when you delivered those forms for extension, so to speak, were they filled out?

A Yes they were.

Q By you?

A Yes, they were.

Q You -- you mailed them or you handed them over to petitioner?

A I would say -- I can't recall offhand, sometimes they were mailed and sometimes they were hand delivered.

Q I will show you a copy of a form submitted to petitioner dated April 13, '64 and ask you if you prepared this form, for signature?

A Yes, I did.

Q And when you delivered this paper --

MR. KLETNICK: Can I see a copy of that?

MR. SILVERMAN: -- when you delivered this paper --

THE COURT: Wait a minute, counsel.

MR. SILVERMAN: -- was it all filled out or was it a blank?

A It was completely filled out, the top portion.

Q Your under oath Mr. Donato.

A The top portion of --

Q You -- you filled it out as you handed it over to petitioner?

A -- any -- any form 872 that I delivered was filled out --

THE COURT: Let's -- let's get -- let's --

THE WITNESS: -- on the top portion.

THE COURT: -- let's understand what we talk about delivered.

MR. SILVERMAN: Yes.

THE COURT: Do you mean when -- after it was executed and then you delivered it back or do you mean that --

MR. SILVERMAN: Didn't you personally turn over these --

THE COURT: -- wait a -- I mean, let's get -- what -- what do you mean by delivery?

MR. SILVERMAN: -- by handing it over to petitioner.

THE COURT: Well I know, but there is two deliveries here, Mr. Silverman.

MR. SILVERMAN: Yes.

THE COURT: There's a delivery when he gives you the form before it's been completed which may or may not be filled out as far as the named taxpayer, years concerned and then there's a delivery of a copy of the form after it's been executed by the parties, is that right, Mr. --

THE WITNESS: That is correct.

THE COURT: -- all right. Now when you delivered it the first time, did you always have them filled out?

THE WITNESS: Yes. Before being signed by the taxpayer in this case Mr. Frank Silverman, the top portion of the form is filled out before it's executed by the taxpayer.

MR. SILVERMAN: And you filled it out?

A Yes, I did.

Q Did you have any conversation along those lines?

A At this point, I could not recall.

Q Uh-huh. Didn't you tell the petition just the right to look at the return and no other purpose you wanted this paper signed?

A No, I did not. I would never make any statement to the effect that a taxpayer, that he's only signing it --

THE COURT: Mr. Silverman --

MR. SILVERMAN: Yes.

THE COURT: -- the forms speak for itself and you're a lawyer and -- and I don't know how you can say --

MR. SILVERMAN: I know, it's unfortunate --

THE COURT: -- and I think a pretty good one so far, so -- but I -- but let me say this Mr. Silverman --

MR. SILVERMAN: Yes sir.

THE COURT: - as -- as you and I discussed off the record, you were a bad boy which means that we've got omissions of interest, dividends and fees here for all of these years. So actually, whether or not these forms are valid or not, makes no difference. There's no -- the statute of limitations doesn't apply in the case of fraud and you might as well reconcile yourself to the fact that whatever deficiency we have here is going to be a deficiency together with fraud penalties.

MR. SILVERMAN: Judge --

THE COURT: And maybe that will compensate for all the time that these people have been spending and trying to get the right figures.

MR. SILVERMAN: -- Judge, that's what I'm trying to drive at, I'm trying to show the Court that this witness is not telling the whole story.

THE COURT: Well if he isn't --

MR. SILVERMAN: I happen to be the witness at the time that he handed that paper over, Judge.

THE COURT: Okay, let -- I'm -- I'm trying to say that for the purposes of -- of our decision here, that on the case -- your case, we don't -- it would be just as well if we didn't have these forms, we don't need --

MR. SILVERMAN: Well why -- why are they using them then?

THE COURT: [illegible] we don't need these forms.

MR. SILVERMAN: Well, let them withdraw it. Let them withdraw the witness.

THE COURT: I also would say that some forms are filled out in print and some in handwriting. I don't know, but let's assume, Mr. Silverman that -- that an agent comes to the taxpayer and he says I need -- I want -- well usually there's an implication, either give him an extension or they'll have to issue a 90 day letter. Which -- that's right, because they can't --

MR. SILVERMAN: That's exactly what he did.

THE COURT: All right, there's nothing wrong with that. That -- he's stating what the facts of life. And -- and you signed the form and he fills in the dates afterwards, I don't see that makes any difference either. The minute you give the man a blank form, you're authorizing him to fill it in, aren't you?

MR. SILVERMAN: I don't believe so.

THE COURT: You give a man a blank check, aren't you authorizing him to put figures in?

MR. SILVERMAN: Well the -- the gross and rent assessors law says otherwise.

THE COURT: If -- if you sign it?

MR. SILVERMAN: I don't believe so --

THE COURT: Well anyhow, that makes no difference because there's no --

MR. SILVERMAN: Well why do they --

THE COURT: -- there's no statute of limitations in the case of fraud is --

MR. SILVERMAN: -- so why do they use the witness and these forms and the --

THE COURT: -- well, because you raised the question to them, that's --

MR. SILVERMAN: -- I am raising the question --

THE COURT: -- all right.

MR. SILVERMAN: -- and I'm still raising it.

THE COURT: I'll take that question under consideration if it should become material.

MR. SILVERMAN: Very well. Mr. Donato, did the statute of limitation run against that return prior to handing that form over to my extension of time?

MR. KLETNICK: Object, Your Honor.

THE COURT: That's a legal question, the Court will decide that Mr. Silverman.

MR. SILVERMAN: This was the 1960 return, wasn't it, Mr. Donato?

THE COURT: Yeah, I would say the statute has run. I'm not sure where there's a gap, a form isn't any good, is it counsel?

MR. KLETNICK: There's no gap in there, Your

Honor.

MR. SILVERMAN: Yes, there is.

THE COURT: Well this is -- the form is dated October 24, 1966 and the --

MR. KLETNICK: That's the last form -- if you'll turn -- the first one starts in '64 --

THE COURT: Oh, I see --

MR. KLETNICK: -- April, '64 and there --

THE COURT: -- these are all 1960's, I see --

MR. KLETNICK: -- we have a chart tracing them.

THE COURT: -- well were these all executed at one time, no --

MR. KLETNICK: No --

THE COURT: -- no.

MR. KLETNICK: -- they're executed consecutively.

THE COURT: So we're really only talking about the first one, is that right?

MR. SILVERMAN: Yes.

THE COURT: The first one, April 9 --

MR. SILVERMAN: And also the last one.

THE COURT: -- the last one?

MR. SILVERMAN: Yes.

THE COURT: I see. Well, anyway, we'll receive them subject to your objection, Mr. Silverman.

MR. SILVERMAN: I am objecting, Your Honor, very strenuously.

THE COURT: That's right, well maybe that will get it reversed on appeal.

MR.SILVERMAN: That's helping them come to it.

THE COURT: Huh?

MR. SILVERMAN: That's helping them come to it.

THE COURT: Well, I'll take that risk.

MR. SILVERMAN: Well.

THE COURT: I'll take that risk. Are you finished with this witness?

MR. SILVERMAN: Well, the question I'm going to ask him, I'll get the same answer --

THE COURT: That's right --

MR. SILVERMAN: -- what's the sense in asking him?

THE COURT: -- you may be excused Mr. Donato.

(Witness Excused)

THE COURT: Now, I understand Mr. Silverman, you got a lot more checks that these gentlemen haven't seen, is that right?

MR. SILVERMAN: I got checks where I can identify --

THE COURT: Now, do they relate to what? Our deposit -- unexplained deposits issue?

MR. SILVERMAN: Escrow funds, yes, Your Honor. Insurance checks --

THE COURT: Yeah.

MR. SILVERMAN. -- sure.

THE COURT: And what does counsel for respondent --

MR. SILVERMAN: I've got quite a few more yet.

THE COURT: -- have --

MR. SILVERMAN: But the Court wanted to -- to get into a session and we suspended the checking with the agent.

THE COURT: I know, but I mean if that--

MR. SILVERMAN: The Court comes first.

MR. KLETNICK: As far as the escrow checks go, Your Honor, we have -- we have looked -- we've begun looking at them --

THE COURT: Yeah.

MR. KLETNICK: -- and I don't think that we're going to make any progress off the record, because we feel that we treated these checks as explained items, at least the ones we've looked at so far and --

THE COURT: Well now --

MR. KLETNICK: -- Mr. Silverman --

THE COURT: -- how about that Mr. Silverman? You -- you -- they can show you whether they -- they -- whether they treated the checks as being explained or not, can't they?

MR. SILVERMAN: Well I hear two different stories. The agent --

THE COURT: I mean they've got a list of -- in other words --

MR. SILVERMAN: Well let -- let him show me --

THE COURT: -- let's -- let's do this, I mean, all we have to do is -- that on -- on this -- on this summary schedule here --

MR. SILVERMAN: Yes.

THE COURT: -- we've got unexplained deposits of x dollars in each and every one of these accounts. Now, you can go through the accounts and pick out the unexplained ones which I assume are identifiable and if -- if you have an identifiable check that explains one of those, we'll take it off the list, that's all.

MR. SILVERMAN: I have it -- I gave it to you a while ago.

THE COURT: Now is that-- is that a fair statement of the situation, if you don't have one, we don't take it off, isn't that right, counsel?

MR. SILVERMAN: We just -- I went over to the agent -- a couple of checks --

THE COURT: Well --

MR. SILVERMAN: -- just a few --

THE COURT: -- I -- I -- these appear to me to be very fine --

MR. KLETNICK: Your Honor --

THE COURT: conscientious young men and -- and I -- I don't know any reason why they would want to charge you with -- with anything except what you owe them Mr. Silverman. They're just like I am. So -- and if you have something -- unfortunately, well I won't say that. If you have something to show them, now that we've got everything in the record here, and we're down to the point of figuring how much you're going to owe and -- and so forth and so on --

MR. SILVERMAN: Oh, yes, we -- we haven't got to the point -- we haven't got quite so far, Your Honor.

THE COURT: Now I think we're getting pretty close to it, we've got the penalty --

MR. SILVERMAN: -- I have --

THE COURT: -- we got thepenalty figured out anyway, that's --

MR. SILVERMAN: -- I've got plenty of checks to show that it -- that income unexplained --

THE COURT: -- if I were you -- if you really -- what we really want from you Mr. Silverman is a nice big blank check all signed out. One that you can fill the figures in. Well you -- you want to recess and go ahead and try some more here and then come back or --

MR. SILVERMAN: It's up to these fellows --

THE COURT: Yeah.

MR. SILVERMAN: -- up to them, whatever they want to do.

THE COURT: What do you think counsel?

MR. BRODSKY: We tried and we didn't make any progress in the last recess, Your Honor --

THE COURT: All right, I guess --

MR. BRODSKY: -- but we'll --

THE COURT: -- I --

MR. SILVERMAN: Oh, that's not so.

THE COURT: -- we'll just have to take them up.

MR. SILVERMAN: That's not so.

THE COURT: Take them up one by one.

MR. SILVERMAN: -- insurance -- the insurance premiums --

THE COURT: Now let's --

MR. SILVERMAN: -- we went over a few checks, we made a lot of progress.

THE COURT: -- let's --

MR. SILVERMAN: Mr. Brodsky -- he wasn't -- he didn't look at them yet.

THE COURT: All right, well -- why don't you go ahead this afteroon and continue along these lines.

MR. SILVERMAN: Yeah.

THE COURT: And I'll see you gentlemen again tomorrow morning at 9:30 and you can report in and if you haven't made progress, we'll just have to do it on the record, but -- you know, I'm a very patient man Mr. Silverman -- don't push --

MR. SILVERMAN: I know, I appreciate it.

THE COURT: -- don't push me too hard --

MR. SILVERMAN: No, I never --

THE COURT: -- you know by a stroke of the pen, you know what I can do here, don't you?

MR. SILVERMAN: I know what you can do.

THE COURT: All right --

MR. SILVERMAN: I'm mindful of the fact.

THE COURT: -- I'll see you at 9:30 tomorrow morning.

MR. SILVERMAN: Thank you, Judge. Make it ten o'clock better Judge.

THE COURT: All right, ten o'clock.

MR. SILVERMAN: Yes, because traffic sometimes.

THE CLERK: All rise.

(Whereupon, at 2:30 P.M., case was recessed as described above.)

A-1639

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: Frank L. Silverman

The foregoing pages, numbers 289 through 358 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Donna Dickert on June 23, 1976 in the United States Tax Court located in New York N.Y., in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name)

July 27, 1976
(Date)

A-640

UNITED STATES TAX COURT

FRANK L. SILVERMAN
Petitioner
vs
COMMISSIONER OF INTERNAL REVENUE
Respondent

Exhibit I

DOCKET NO. 3506-68

LOCATION OF HEARING: New York, New York

DATE: June 24, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES: Frank L. Silverman
Pro Se

Theodore J. Kletnick
David Brodsky
Attorneys for Respondent

Frank L. Silverman

vs.

Commissioner of Internal Revenue

10:00 A.M.

(Same appearances)

MR. SILVERMAN: Good morning, Judge.

THE COURT: Good morning. Good morning, Mr. Silverman.

MR. SILVERMAN: Still fighting.

THE COURT: Oh, I know-- I know.

THE CLERK: Be seated. The Court is now in session.

THE COURT: That's what we're here for.

MR. SILVERMAN: No, we'll fight gentlemanly like.

THE COURT: Excuse me a minute. I have a few notes here. I thought maybe we better see where we're going.

(Off the record)

THE COURT: Well, have you made any progress?

MR. KLETNICK: Yes, we have, Your Honor.

THE COURT: That's good.

MR. KLETNICK: We've made some.

THE COURT: Do you think that we can make any more progress or have we just about exhausted or possibilities here?

MR. KLETNICK: Well, why don't I leave that up to the Court to decide. I'll tell you what we've done.

THE COURT: All right.

MR. KLETNICK: Mr. Silverman presented a mass of documents to us at this late date most of which we've never -- you know, just seen for the first time and we started going through all of them. We've divided them into three piles which are on the witness stand there. One pile being the items that are no longer contested by either party and you know, they're basically items that we had eliminated and Mr. Silverman now agrees that we eliminated and is not going to bring them up to the Court's attention. We have a second pile which is items that Mr. Silverman has convinced us that he's right on.

THE COURT: Right.

MR. KLETNICK: Which we're in the process of preparing a statement on or Supplemental Stipulation of Facts if Mr. Silverman will sign it, I don't know. And in the third pile are items that are -- that Mr. Silverman and respondent dispute and he'd like to present to the Court. Then this fourth pile on our table here is all the rest of the documents that Mr. Silverman wants to have considered. Is that correct?

MR. SILVERMAN: Judge, we made considerable progress in the way that the system was reduced --

THE COURT: Well, that's fine.

MR. SILVERMAN: -- by substantially and my contentions outrule --

THE COURT: Let me say, Mr. Silverman that you could have done this at any time if you'd -- you'd been willing to --

MR. SILVERMAN: Judge, __

THE COURT: -- come in and work as hard as you've worked under my encouragement in this --

MR. SILVERMAN: Judge, they weren't amenable. They --

THE COURT: Oh, no. no.

MR. SILVERMAN: -- can"infute"my statement, if they wish. They didn't want to give an inch. Now, --

THE COURT: They didn't have this information, Mr. Silverman.

MR. SILVERMAN: I offered them like --

THE COURT: Let's take up the third pile here first and see if we can dispose of that.

MR. SILVERMAN: Judge, we've got a bunch of stuff here.

THE COURT: Well, would you rather go over that?

MR. SILVERMAN: I think we should present the whole thing at one time. It'll save time for the Court. It'll save time for us and aggravation with it.

THE COURT: All right. We'll recess until 2:00?

MR. KLETNICK: We won't be able to get this finished in a day --

THE COURT: You won't?

MR. KLETNICK: -- this pile. It took us from 2:00 to 8:30 last night.

MR. SILVERMAN: Oh, 1:00 we were here.

MR. KLETNICK: From 1:00 we started?

MR. SILVERMAN: Yes, sir.

MR. KLETNICK: Till about -- when did we leave-- 8:15?

MR. SILVERMAN: 5:30.

MR. KLETNICK: 8:15 or 8:30 without time off for lunch or diner or anything.

MR. SILVERMAN: We went right through it. We worked very hard -- all four of us.

THE COURT: Do you think you can get it finished by tomorrow morning?

MR. SILVERMAN: With the pile?

THE COURT: Yeah.

MR. SILVERMAN: I hope so. We'll stay right through it. We can stay right through with them until we get through with them. Lunch or no lunch, I go with them. I go along. I want to dispose of this.

MR. KLETNICK: I think we can, Your Honor, but I think the Court might want to consider going over the disputed items that we now have at this time.

MR. SILVERMAN: That's right. Why do a --

THE COURT: Well, let's do that then.

MR. SILVERMAN: Why do a double, Judge?

THE COURT: Well, because otherwise, we'll just have that -- it's better --

MR. SILVERMAN: That's all right. I'm --

THE COURT: Yeah.

MR. SILVERMAN: -- willing to go along with it.

THE COURT: Let's go over the disputed items and then --

MR. SILVERMAN: Very good. Very good.

MR. KLETNICK: Your Honor, maybe I could make a suggestion--a technique that you might want to use. Respondent would like to go over those items, item by item and have Mr. Silverman testify and then have our agent say why we're still disallowing them.

THE COURT: All right. Now, which schedule should we work from on those?

MR. SILVERMAN: You pick a schedule.

MR. KLETNICK: 23-W and 24-X.

THE COURT: 23-W and 24-X.

MR. SILVERMAN: You'll have to give me a copy.

I don't know where they are. I don't want to spend an hour looking.

THE COURT: All right. Now, why don't you come up here and let's take away the other pile so we won't confuse him. If he wants an envelope to put them in, we've got some here, and just give Mr. Silverman the disputed pile. All right, Mr. Silverman, let's take your first item here.

MR. SILVERMAN: As we go through the pile? Yes, sir. Your Honor, I am offering a copy of a check -- where the original went, I don't know. A check drawn to Mr. Cutrone -- he's deceased now.

THE COURT: Yeah.

MR. SILVERMAN: This was a deposit -- this was --

THE COURT: C-u-t-r-o-n-e.

MR. SILVERMAN: Yes, sir.

THE REPORTER: Thank you.

THE COURT: Caroline Cutrone.

MR. SILVERMAN: Mrs. Caroline Cutrone. This was a sum -- I believe it was $950.00 or $1,000.00. I got a check from them or cash. It could have been either one at the time. It was in connection with the sale of a piece of property, and I held an escrow with that $1,000.00 or $950.00. I don't recall the exact amount. It went into my special checking account and they -- the gentlemen that we worked on last night said they can't account for it. I don't know the specific date. I don't know the specific date, Judge. It was the course of my practice in that particular year.

THE COURT: But you don't show any income from --

MR. SILVERMAN: There's no income. This is just escrow fund because the property sold the subject in the same condition.

THE COURT: But if you sold a piece of property --

MR. SILVERMAN: I -- on behalf of these people.

THE COURT: If you sold it on behalf of these people they'd pay you for it, wouldn't they?

MR. SILVERMAN: No question about it but this is escrow funds that went into the account. That's what I'm trying to point out, Judge.

THE COURT: Well, Mr. Silverman, let's say that at some stage Caroline Cutrone gave you $800.00 in escrow funds --

MR. SILVERMAN: It was more then -- $950.00 or maybe $1,000.00.

THE COURT: All right. And you gave her back $800.00 in 1965.

MR. SILVERMAN: Yes.

THE COURT: That would mean that whatever the transaction entails it had been closed when you gave her back the money, isn't that right?

MR. SILVERMAN: That's right.

THE COURT: And at that time, you would take out your fee, isn't that--

MR. SILVERMAN: There was no fee there. I think I reported it in my daily receipts. There was $100.00.

THE COURT: Well, it's not in your daily receipts with no fee.

MR. SILVERMAN: No, there's no fee on this check. This is just a refund of escrow fund.

THE COURT: No.

MR. SILVERMAN: It says on the back less fee. It says so right on the back.

THE COURT: That's right. Now where's the fee from Cutron

MR. SILVERMAN: The fee was from the total sum of $1,000.00.

THE COURT: I know. Now, -- well, we've got all of your fees correlated for this year and we don't show any fee that would relate to this transaction.

MR. SILVERMAN: What I want to point out to the Court, --

THE COURT: Let's get -- let's -- let me ask -- isn't that right, counsel? Can we identify any fee that --

MR. WALLACE: No.

THE COURT: No. See. And we can identify every fee we've charged him with?

MR. WALLACE: Right.

MR. KLETNICK: Except for '60.

THE COURT: Except for '60, right.

MR. SILVERMAN: Judge, this is a refund of escrow monies that was deposited in my account which they charged me with unexplained deposits. I'm trying to explain the deposit. Nothing --

THE COURT: Well, let me explain something to you, is that -- number one, we don't know which -- where the deposit was, do we?

MR. SILVERMAN: I know where the deposit went into.

THE COURT: Well, can you point which deposit you're talking --

MR. SILVERMAN: No, I can't point out that.

THE COURT: All right. Number one -- number two, --

MR. SILVERMAN: It went into the Merchants Bank.

THE COURT: Number two, your explanation would indicate that you did some legal business for which no income has been reported, isn't that right?

MR. SILVERMAN: I recorded it in my daily receipts. They were reported, Judge.

THE COURT: Well, Mr. Silverman, it's the Court's understanding and I've been over the schedules, that each and every item that has gone into your fee income has been identified and that none of it relates to this matter here because we've got the settlement papers --

MR. SILVERMAN: I think the Court --

THE COURT: -- on all of it.

MR. SILVERMAN: -- is not -- maybe I don't make myself clear.

THE COURT: What you're saying is that you got an unaccounted for $1,000.00 that went in at some time and you kept $200.00 and gave back $800.00.

MR. SILVERMAN: No, I didn't keept $200.00. It was $100.00. I had some other disbursements on their behalf and I used out of that escrow fund.

THE COURT: Well, what have you got to show that?

MR. SILVERMAN: I have nothing. Just my -- my sworn statement. We don't keep $10.00 bill out of his purse to pay a bank or a $25.00 bill.

THE COURT: Yeah, but you should keep track of your fees. You didn't report this fee let's face it, no way.

MR. SILVERMAN: Not $800.00 because it wasn't a fee.

THE COURT: You didn't report any fee on account of this.

MR. SILVERMAN: I did on my daily sheet.

THE COURT: I'm sorry, --

MR. SILVERMAN: I did, Judge.

THE COURT: Mr. Silverman.

MR. SILVERMAN: I did.

THE COURT: But we have accounted for every dime that you reported.

MR. SILVERMAN: Well, if they didn't account for this it's not my blame.

THE COURT: No.

MR. SILVERMAN: I've -- I've given everything that I have.

THE COURT: Well, --

MR. SILVERMAN: I've given these gentlemen everything I have the past couple of days.

THE COURT: I don't mean for the past couple of days. I mean in --

MR. SILVERMAN: At that time, it was reported, Judge.

THE COURT: In the schedule --

MR. SILVERMAN: It was reported.

THE COURT: In the schedules that we've made up here, --

MR. SILVERMAN: Be mindful of the fact, --

MR. KLETNICK: 20-T, Your Honor.

MR. SILVERMAN: Be mindful of the fact that these schedules were made without my being present, without my knowledge. They were just compiled by the agents.

THE COURT: They did a pretty good job.

MR. SILVERMAN: I don't know that they did a good job but that's -- that's --

THE COURT: Let's say they did a lot better job then you've done today because you haven't even reported any of this all. Now, let's stop playing games, Mr. Silverman. When you elected to be a bad boy as you call it, you incurred certain risks and one of those risks is that you may not get every penny that you would have gotten if you'd been a good boy. Because of the fact of concealment deprives you of the evidence to prove what you're contending, isn't that right?

MR. SILVERMAN: Well, if I return escrow funds, I shouldn't be charged with it --

THE COURT: Well, I know.

MR. SILVERMAN: -- under any circumstances.

THE COURT: You want to give me -- you want me to give you credit for having a -- a legal case --or a legal matter here which -- based on your own records, you never reported. That's the problem.

MR. SILVERMAN: Well, you have no evidence I didn't report it, Judge.

THE COURT: Yes we do.

MR. SILVERMAN: Well, all right.

THE COURT: We can show everything that you did report. See? All right. Let's get that one marked for identification. Mark this for identification and received in evidence --

MR. SILVERMAN: I'm offering it in evidence.

THE COURT: -- in connection with the testimony of the petitioner that he has not been given credit for an $800.00 escrow fund.

THE CLERK: Admitting Petitioner's Exhibit 81.

THE COURT: Yeah, and that the Court's ruling would be that you can't give him credit for something that he can't show that he took into income in the first instance.

MR. SILVERMAN: Your Honor mean to say that the funds that I held in escrow for people I don't get credit for?

THE COURT: Well, I don't know. We don't know what you paid it out of, Mr. Silverman.

MR. SILVERMAN: I paid it out of the account where I put it in. I put it in the special account. The check so indicates.

THE COURT: Now, what's the next one we have?

MR. SILVERMAN: The next we have -- a check for $25.00.

THE COURT: $25.00?

MR. SILVERMAN: Yes.

THE COURT: Let's see.

MR. SILVERMAN: Here's a check and a photocopy of the check. I've got a series of checks over here. Do you want to take them up each one at a time, Judge?

THE COURT: Are they all the same story?

MR. SILVERMAN: It's all exchanges, yes, Your Honor.

THE COURT: All right. We'll just make them into one packet. What do they add up to?

MR. SILVERMAN: Oh, $25.00, $68.00, $14.00, $72.50, $25.00 an insurance refund -- whatever it is, $71.90 exchange for payment of rent in the Mortellaro case. They were neighbors. They asked me for a check. I gave it to her and she gave me the cash for the other checks.

THE REPORTER: Would you spell Mortellaro please?

MR. SILVERMAN: Yes. M-o-r-t-e-l-l-a-r-o.

THE REPORTER: Thank you.

THE COURT: Now, this first check -- $25.00 payable to Emanual Greenblum, et cetera?

MR. SILVERMAN: It's on the back of the check. It has a notation.

THE COURT: Per letter dated --

MR. SILVERMAN: Yes.

THE COURT: -- December 12, 1960.

MR. SILVERMAN: It was a claim made for a client of mine and it was settled for $25.00. They gave me the money and I paid them the check. Probably gave me cash.

THE COURT: And where -- where -- where -- where does this come in or out and why?

MR. SILVERMAN: It's been into the Merchants Bank.

THE COURT: Went into the Merchants Bank?

MR. SILVERMAN: Yes, sir.

THE COURT: Well, why should we give you credit for it?

MR. SILVERMAN: Unexplained deposits.

THE COURT: Well, this isn't a deposit. This is a withdrawal.

MR. SILVERMAN: Yeah, but I deposited money to cover this check.

THE COURT: Well, where is the $25.00 cash in the Merchants Bank?

MR. SILVERMAN: I probably put it with some other cash. It wasn't just one item -- $25.00 to put it in. Maybe with the others.

THE COURT: Well, I'm sorry. There's no proof of that.

MR. SILVERMAN: Well, Judge, that's the way -- that's the way you ought to --

THE COURT: What's the next one--$68.14 --

MR. SILVERMAN: Yes.

THE COURT: -- Benjamin Hecker?

MR. SILVERMAN: That's from the payments of some rent for my client. The back of the check will tell you that.

THE COURT: Less legal fee as per bill.

MR. SILVERMAN: Sure.

THE COURT: Well, where is the legal fee?

MR. SILVERMAN: $1.25 was legal --

THE COURT: Becker vs. Miano.

MR. SILVERMAN: It was a landlord and tenant case.

THE COURT: Do we have Becker vs. Miano listed anywhere on our schedule of cases that he handled?

MR. SILVERMAN: No, sir. You haven't got it yet because it was a landlord and tenant case -- they were suing us.

THE COURT: All right.

MR. SILVERMAN: But that was for rent.

THE COURT: All right.

MR. SILVERMAN: I got the money. I put it in the account. I gave him my check.

THE COURT: All right. Now, let's see our next one. Settlement including rent February 3, -- Avenue. This is a payment of rent?

MR. SILVERMAN: Yes, sir.

THE COURT: Gitomer is it? Who is that?

MR. SILVERMAN: Oh, --

THE COURT: Gitomer, Schwimmer.

MR. SILVERMAN: Those are the lawyers.

THE COURT: Lawyers for who?

MR. SILVERMAN: For the landlord. I represented the tenant.

THE COURT: You represented the tenant?

MR. SILVERMAN: We settled the rent case. It was a landlord/tenant case, Judge.

THE COURT: All right. Now, -- how can you show that you received this money -- $72.50 from the tenant and in fact deposited it somewhere?

MR. SILVERMAN: I deposited in one of the Merchants accounts.

THE COURT: Well, I know but I mean that's --

MR. SILVERMAN: Judge, lawyers are -- do this --

THE COURT: Let me say this.

MR. SILVERMAN: -- every day.

THE COURT: The problem with all of these -- let's mark these for identification--package of checks. The problem with all of these --

MR. SILVERMAN: Mr. Clerk, --

THE COURT: -- Mr. Silverman, --

MR. SILVERMAN: -- give me -- give me the original checks and you keep the photocopies please.

THE COURT: Just a put a -- put a -- staple a little piece of paper to it and just put it on there and then he can unscramble them and substitute. The problem with these, Mr. Silverman, --

MR. SILVERMAN: I would like to show the Court --

THE COURT: -- if you don't keep records and if you start concealing your income and --

MR. SILVERMAN: Judge, --

THE COURT: -- not reporting income and all like that --

MR. SILVERMAN: This was not concealing income, Judge.

THE COURT: Well, the problem is, Mr. Silverman, is that I'm not going to require the Government to allow you anything that you can't show went in and out and you can't show what happened to this cash. The cash you may have -- you didn't need to put it in the account. You could have used it for living expenses. We don't know what happened to the cash.

MR. SILVERMAN: Judge, you have a number of cash deposits in the bank.

THE COURT: I'm sorry, but if we can't identify the cash deposits, we're not going to give you credit just because you wrote checks. But anyway, we'll receive this in evidence for the purposes indicated.

MR. SILVERMAN: These are not relatives. These are not --

THE COURT: I don't care who they are. Just because you wrote checks doesn't mean that you deposited the money. If they gave you cash -- if you needed -- you might have gone down to the grocery store, or dropped it in the Temple or something. We don't know what you did with it. All right. What's the next one?

MR. SILVERMAN: Well, if that's the -- that's the situation, what's the point of going on with this?

THE COURT: Well, you may want to put them all in when you go up to -- before the Court of Appeals.

MR. SILVERMAN: Well, I know.

THE COURT: I have a tough time with Judge Edelstein here.

MR. SILVERMAN: He's the Chief Judge of the District Court.

THE COURT: Yeah, that's right. Oh, is he on the Court-- he's the Court of Appeals.

MR. SILVERMAN: Now, he's the Court of Appeals. He use to be the Chief Judge.

THE COURT: That's right. I say, I have a tough time. He's one of yours. He's not one of mine. So --

MR. SILVERMAN: It doesn't matter.

THE COURT: -- I don't do too well before him.

MR. SILVERMAN: He's a good Judge.

THE COURT: I say I don't do too well. I disagree based on what he does to me but --

MR. SILVERMAN: You have the right to disagree.

THE COURT: That's right.

MR. SILVERMAN: He has a right to disagree. That goes for both of you.

THE COURT: I'll tell you what I'd suggest, Mr. Silverman.

MR. SILVERMAN: Yes, you tell me.

THE COURT: We've got this --

MR. SILVERMAN: I want the Court to deal with me --

THE COURT: They've got this down to just about rock bottom. I think we could sit here and work for another week and we'll do it if we have to -- we'll do it if we have to. We have that Cosden Petroleum dividend which the respondent will have to take out since --

MR. SILVERMAN: No, it's Crescent Petroleum, Judge. Crescent Petroleum preferred.

THE COURT: The one that's non-taxable.

MR. SILVERMAN: That's the one.

THE COURT: Yes.

MR. SILVERMAN: I know what you're talking about.

THE COURT: Okay.

MR. SILVERMAN: Cosden was taxable.

THE COURT: That one we adjust. We have a -- some other adjustments which I understand are not in dispute. On the capital gains problems that we had. Number one, the stock dividends and the 5% De minimis Rule went out with the '54 Code. The only thing now that you can disregard is stock rights up to 15% in value. So the Government's adjustment on the stock dividends is in accordance with the law. We'll accept the -- the company's records in regards to the sale of the class A stock of Atlas and we will not charge you with any sale of A but by the same token, there's not doubt that you sold class B and you got the proceeds and you used the proceeds to buy other stock. You withdrew some of the "funny" funds and gave it to your son-in-law so that the gain on the sale of the class B stock is a -- is a proper adjustment. On -- on the basis to be used where the certificates are identifiable, you have to use the basis for that stock that you bought that's represented by that certificate. Where there's no identification, you have to use first in and first out which it's the Court's understanding that that's what the Government has done. So that brings us done to the point that on the capital gains and capital losses, all that we would exclude would be that sale of Atlas class A. Now, to the extent that you used a lower -- a higher basis in those schedules and thereby, used a lower basis when you sold the rest of the stock at a later date you'd be entitled to an offsetting credit or adjustment which I'll suggest a way of dealing with that if respondent agrees. I would suggest that we do this now. I think -- we have to concede that finally Mr. Silverman has done a lot of work here. If he had done it five years ago, why he probably would have achieved a better result, Mr. Silverman. Are you willing to let the Government go ahead and compute the amount of the deficiencies for these years giving you credit for the adjustment in the class A stock on the capital gains, credit for all of the deposits that you have identified and they have agreed to up until now and an additional credit to take care of any deposits we've missed of $1,500.00 a year for each of the years '61 to '65? That's $7,500.00 total which I'm sure will take care of all of the rest of the garbage you have there. So for 1961 to '65 --

MR. SILVERMAN: Judge, --

THE COURT: -- we take off -- we reduce the unexplained deposits just by a flat $1,500.00 a year to take care of -- we'll assume that the Government's only 95% right instead of 100% right and we'll compute the deficiency on that basis and in addition to that, there'll be the fraud penalty and that'll be the amount of taxes you owe. Now, the only other alternative I see that we have is to put all of this additional packages here in the record and then to recess and allow the Government to examine them all and then come back in and resume another week of -- and I'm not sure that your -- you know -- it's just money we're talking about.

MR. SILVERMAN: Judge, --

THE COURT: I'm not worried about you.

MR. SILVERMAN: -- I didn't feel well last night --

THE COURT: I'm not worried about money. That's right.

MR. SILVERMAN: -- and this morning. Judge, let me make one comment. I have a couple of items I'd like to take up with this Court -- this --

THE COURT: That takes care of the -- the $1,500.00 a year is suppose to take care of -- of anymore items. That's the whole idea, see.

MR. SILVERMAN: You mean all that stuff that I have here?

THE COURT: Yeah. When you add it all up it isn't going to come to $7,500.00 anyway and that certainly is going to come to $7,500.00 of anything that I would otherwise allow. So this way, we get it all settled, the respondent can compute the figures and all like that. We'll come in here at 10:00 tomorrow morning and we'll sign off --

MR. SILVERMAN: Before we do that, Judge, I have two things I want to take up with you.

THE COURT: -- and there'll be -- you'll go away from here light and you can go and enjoy yourself --

MR. SILVERMAN: I appreciate your consideration. I mean it.

THE COURT: Go up to the Catskills.

MR. SILVERMAN: No, no, that's too far to walk. There's no use leaving if I can't afford to ride.

THE COURT: That's right.

MR. SILVERMAN: You give me -- you gave me a very medium amount -- allowance on my car gas. I can't drive.

THE COURT: I gave you -- come on --

MR. SILVERMAN: All right. I accepted it. I don't argue with you.

THE COURT: I gave you more then you're entitled to only --

MR. SILVERMAN: Judge, --

THE COURT: -- because everyone else in town is stealing. That's the only reason.

MR. SILVERMAN: Judge. Oh, Judge, you're a grandfather and you talk like that?

THE COURT: Huh?

MR. SILVERMAN: You're a grandfather and you talk like that?

THE COURT: Right. I'll tell you --

MR. SILVERMAN: I want to take this up with you, Judge.

THE COURT: This is a --

MR. SILVERMAN: This is a return of capital and they charged me with income, these venerable gentlemen.

THE COURT: No, no, no, we may -- this is the --

MR. SILVERMAN: Well, Judge, no, this is $16,750.00 return from Cosden Petroleum stock.

THE COURT: All right. Well we've got that on our schedule, haven't we?

MR. SILVERMAN: No but look what they did to it.

THE COURT: When? This is '69

MR. SILVERMAN: No, '60 -- it's the year 1960.

THE COURT: '60 -- now what did they do to it?

MR. SILVERMAN: Yes, sir. The letter was not in '69.

THE COURT: What did they do to it? What's the story on this, counsel?

MR. KLETNICK: Can I see it.

THE COURT: Yes.

MR. SILVERMAN: Here's a copy. I gave it to them sometime, here's another copy.

THE COURT: Here we are.

MR. SILVERMAN: It's found in the East River Savings Bank, number 3374 for the year 1960.

THE COURT: East River Savings Bank, 19 -- $16,000.00.

MR. SILVERMAN: $725.00.

THE COURT: Yeah, they got it down there.

MR. SILVERMAN: Yeah, but look what they did. They only gave me part credit. They didn't give me the whole thing.

THE COURT: Yes they did.

MR. SILVERMAN: The whole thing? Then I keep quiet if they gave me the whole thing.

THE COURT: They gave you the whole thing. That's all in there, isn't it?

MR. KLETNICK: Yeah, we eliminated it.

THE COURT: Sure.

MR. SILVERMAN: You eliminated the whole thing?

MR. KLETNICK: Yes.

THE COURT: Yeah. Sure.

MR. SILVERMAN: Well, I have one more question for Your Honor.

THE COURT: All right. Then you'll sign?

MR. SILVERMAN: I don't argue with them. I wouldn't bother you. Now in 1960, I purchased a mortgage. A very, very close friend of mine was in trouble, the bank wouldn't renew it.

THE COURT: Yeah, get that towel up there, will you?

MR. SILVERMAN: No, no, not me -- that was my mortgage. So I helped him out. I gave him $4,125.00

and I got the mortgage assigned to me.

THE COURT: Right.

MR. SILVERMAN: He made me several payments. I resold that mortgage in 1963. I got $3,500.00 for it. I received no credit. I have the papers to prove to Your Honor. The original certified copy from all the records.

THE COURT: Well, where's the $3,500.00?

MR. SILVERMAN: I put it in one of the accounts. I don't know where I put it, Judge.

THE COURT: That's the whole problem here.

MR. SILVERMAN: I don't know where I put it.

THE COURT: Unless we know that it's in an account and we're taxing you for it, I don't know how we can give you credit and that's why I suggested that we just take this $1,500.00 a year for five -- well, we threw in 1960. Let's take $1,500.00 a year for all six years. Now that -- you didn't realize that that gives you $9,000.00? You couldn't come up with $9,000.00 if we sat here for two years.

MR. SILVERMAN: I don't intend to sit here two days more.

THE COURT: Okay. If respondent would agree, I would say -- all right -- no, '60's clean though. There's just no way we can increase '60. I looked it over last night, --$1,500.00 a year for '61 to '65 and -- and -- we know that this isn't down to the last nitty gritty but there's probably some other income that we don't know about too. So this is a good deal for you. You ought to grab it and run. Believe me.

MR. SILVERMAN: I don't know what to do. We have -- this I can assure the gentlemen. We have 1960 closing statements that they don't want to give me credit for, Judge

THE COURT: What do you mean 1960? Well, you have to have -- if you don't have the fees and if you can't --

MR. SILVERMAN: I have the fees. I've got a closing statements too, Judge.

THE COURT: If you can't tell where the money went --

MR. SILVERMAN: Yes.

THE COURT: I think we gave you credit for every statement that you had in there.

MR. SILVERMAN: Judge, --

THE COURT: Look, the problem is this, Mr. Silverman.

MR. SILVERMAN: Yes.

THE COURT: We've reached the stage now where if we're going to keep going through these, we'll dedicate another week to it.

MR. SILVERMAN: No, Judge. We don't have to. I--

THE COURT: Well, then let's just take the $7,500.00 round figure that -- or $6,000.00, I guess it comes to, that you have and -- no, $7,500.00.

MR. SILVERMAN: $7,500.00.

THE COURT: Let's just take that and forget all of this.

MR. SILVERMAN: No, these are cases I settled and I have --

THE COURT: I know it but I say -- just forget it all.

MR. SILVERMAN: No, that adds up more then $7,500.00, Judge.

THE COURT: I know but you don't know whether you'd get anything. Now, you're going to have to pick or choose here pretty soon.

MR. SILVERMAN: Judge, will you bear with me for a moment? I'll show you the closing statement. I'll show you the check.

THE COURT: Wait a minute. No, you just sit there.

MR. SILVERMAN: No, I want --

THE COURT: No, sit there. All right.

MR. SILVERMAN: I want to show you this closing statement. I got it right here. It's here. It's available for the --

THE COURT: Here's a check in 1960 from Serrano for $200.00.

MR. SILVERMAN: That's a settled case.

THE COURT: All right. Is that your fee?

MR. SILVERMAN: No. That's -- my fee is in the closing statement. They charged me with a fee.

THE COURT: Is --

MR. KLETNICK: The closing statements are on the table right in front of you, --

MR. SILVERMAN: Well, --

MR. KLETNICK: -- and I'm pretty sure they're on the bottom of the pile.

THE COURT: What's the story on this, respondent?

MR. KLETNICK: Mr. Silverman, gave us about -- approximately 10 closing statements yesterday, and I think 2 or 3 of them you could trace to actual deposits but respondent doesn't know -- and the other 7 he couldn't -- and respondent doesn't know if he reported it or not in 1960 --

THE COURT: That's right.

MR. KLETNICK: -- and the amounts aren't that substantial either, I don't think.

THE COURT: That's right. Mr. Silverman, I'm going to give you one last chance here.

MR. SILVERMAN: Judge, please --

THE COURT: Now, wait a minute. No, no --

MR. SILVERMAN: Please, Judge --

THE COURT: I'm going to give you one last chance.

MR. SILVERMAN: All right.

THE COURT: The problem with you, Mr. Silverman, is that you want to take both. Now, your alternative is either going to be to take this $1,500.00 a year because the Government has to have time to refigure all of this for you.

MR. SILVERMAN: The other agent has it in a statement I want to show you.

THE COURT: I don't care what he has.

MR. SILVERMAN: I want to show it to you.

THE COURT: If we're going to try the case for another week, we'll try it. If we want to dispose of it by tomorrow morning, we'll just draw the bottom line now and take another $1,500.00 a year for '61 to '65 and let them be doing the computations and I'm sure you'll probably want to know what they're doing.

MR. SILVERMAN: The Court will have to do better then that for me to make it equitable to both sides.

THE COURT: Well, that's the best --

MR. SILVERMAN: This would not be equitable, Judge, because I've got the --

THE COURT: Well, that's the best I can do. Now, if you want to go the other route that's all right.

MR. SILVERMAN: I have more escrow funds to people --

THE COURT: We'll roll up our sleeves and we'll come back on Monday and we'll just keep going here. We'll have to quit by Fourth of July and maybe recess for the convention but you're a Republican, are you going down to Kansas City?

MR. SILVERMAN: I am, yes.

THE COURT: Well, --

MR. SILVERMAN: I am. I'll have to miss it. I'd rather spend it with you in this Courtroom.

THE COURT: Well, you may be doing it if you don't hurry up here. I'm telling you.

MR. SILVERMAN: I have exchanged checks for --

THE COURT: I know but Mr. Silverman --

MR. SILVERMAN: Judge --

THE COURT: -- really.

MR. SILVERMAN: Please -- please --

THE COURT: Let me say this.

MR. SILVERMAN: Please listen to me.

THE COURT: Let me say this.

MR. SILVERMAN: Judge, please listen to me.

THE COURT: You come into this Court --

MR. SILVERMAN: Yes.

THE COURT: -- and you try to beat the Government and let's face it --

MR. SILVERMAN: I'm not trying to beat anybody.

THE COURT: I mean --

MR. SILVERMAN: They sure are trying to beat me.

THE COURT: There are not very many Judges that would be as patient as I am with a man who admits to having attempted to evade his taxes and you do. There's no -- you admit it. Now, --

MR. SILVERMAN: I needed --

THE COURT: -- we've been very patient and notwithstanding the fact that the predicament you find yourself in here is strictly of your own doing. We've tried to give you the benefit of any doubt and we reached the -- the stage now where -- where the amount of time that we'd have to spend in order to become more precise here just isn't worth the effort. That's my feeling. Maybe it is to you. --

MR. SILVERMAN: Judge, --

THE COURT: -- and that's why I pulled -- I pulled a figure out here to cover any further slippage of $1,500.00 a year and I'm going to recess here for about 15 minutes and give you a good chance to think that over because when I come back in that deals off.

MR. SILVERMAN: How about the insurance paper I receive from people?

THE COURT: Mr. Silverman, I'll give you but 15 minutes to think it over and then when I come back and you decide you don't want that deal, well then we'll just continue on and on and on.

THE CLERK: All rise.

(RECESS)

THE CLERK: All rise. Be seated. The Court is now in session.

THE COURT: All right, Mr. Silverman.

MR. SILVERMAN: Yes, Your Honor.

THE COURT: You reached a decision?..

MR. SILVERMAN: Before I reach a decision, I'd like to point out something for the Court. The Government charged me with commissions for the year 1960 talking about insurance commissions and my brokerage side of my practice-- $165.37 was 1960, $257.34 '61, and '62 they charged me with $199.79, in 1963 they charged me with $258.39, 1964 they charged me $187.70 and 1965 they charged me $47.02. Now in the year 1960, the total premiums that I received from my clients was $1,848.48. I got the bills for it and I got the charges for it. In 1961, the total amount of gross premiums were $1,809.74.

THE COURT: Let me ask you, Mr. Silverman.

MR. SILVERMAN: Yes, sir.

THE COURT: We're talking about $100.00 here.

MR. SILVERMAN: No such substantial sums.

THE COURT: If the Government eliminated all of these commissions it doesn't come to $1,000.00, does it?

MR. SILVERMAN: If the Government eliminated --

THE COURT: The whole thing -- the whole line.

MR. SILVERMAN: It's approximately $1,000.00.

THE COURT: All right. If the Government eliminates all of the commisions, are you willing to sign up on the basis I suggested?

MR. SILVERMAN: Well, that's some concession, Judge. I'd like to consider it.

THE COURT: Well, now we're not going to consider anymore because you'll consider it, and you'll come back in and you're going to start --

MR. SILVERMAN: No, no, I wanted to consider it now. I don't want to come back on this.

THE COURT: All right. Well, let's just have a yes or no. Now, you said before giving me your decision you wanted to bring this to our attention. All right. You --

MR. SILVERMAN: Now, there's also --

THE COURT: You've brought another few hundred dollars items to the Court's attention. You know, there's a lot of this proof in here that really you've been given credit for but would be very difficult really if contested. Now, I just hate to see this case go to decision but if we have to, we have to. You've raised one more question. Now, this -- the Court is asking you that if the Government just takes out the commissions line altogether --

MR. SILVERMAN: There are a few other items.

THE COURT: no. That's -- this is it. Are you --

MR. SILVERMAN: Judge, on the absolute facts, the agent admitted --

THE COURT: We've given you $1,500.00 a year to take care of this kind of garbage. That's just what I told you.

MR. SILVERMAN: No, Your Honor.

THE COURT: Then you come back in and you want -- you want to raise the garbage all over again.

MR. SILVERMAN: I don't want to raise garbage. I want to get through with this.

THE COURT: Well, this is garbage. Are you willing to signon this basis where we'll take out all of these commissions. They don't amount to a hill of beans, and we'll give you $1,500.00 a year for '61 to '65 to account for any deposits that -- if we worked harder we might be able to identify. Now, yes or no?

MR. SILVERMAN: What about Schedule B that they cut me out? They gave me $500.00 where I have a substantial sum of expenses.

THE COURT: Oh, no -- we're not talking about -- if you've got deductions or if you're entitled to the marital deduction or -- I mean to the --

MR. SILVERMAN: They cut me out of that too, Judge.

THE COURT: No, no. I'm talking about--this goes down to your income line. Now, the rest of it is -- isn't going to be any problem. In some years you filed a joint return and some years you filed a separate return. Your taxes will be computed in accordance with the way you filed your returns. You'll be given an exemption for your wife. If you have itemized deductions exceeding the amount of the standard deduction where you've got the actual paid bills and all, is that right --

MR. KLETNICK: Well, Mr. Silverman can't itemize for the years 1960 through '62 and the reason is his wife filed a separate return, --

THE COURT: Oh, she --

MR. KLETNICK: -- the 1040A.

THE COURT: -- files a separate return.

MR. KLETNICK: She filed the 1040A and, therefore, has to take a standard deduction.

THE COURT: That's right.

MR. SILVERMAN: All right. No, Judge, I wasn't told until the gentleman told me that she filed separately.

THE COURT: Well, that's the law, see?

MR. BECKER: You were told last night.

MR. SILVERMAN: Last night.

THE COURT: Yeah. Well, in any event, it's going to be --

MR. SILVERMAN: Yeah, I was told last night. Yeah. That's right.

THE COURT: nce we get down, Mr. Silverman, to the final income item, there's no problem. The taxes will have to be computed. That's automatic. That's just an automatic computation. So I'm asking you once more, are you willing to go ahead --

MR. SILVERMAN: I'm going to ask the Court indulgence. I'd like to approach the bench off the record if I may -- if I may, Judge, --

THE COURT: Let's --

MR. SILVERMAN: -- together with the counsel for the Government.

THE COURT: Let's put it on the record because there's nobody here but us boys.

MR. SILVERMAN: I know. No, there are other people here other then lawyers.

THE COURT: No, they are all just --

MR. SILVERMAN: I don't know why they enjoy in participating in somebody's misery but some people do appreciate --

THE COURT: There are no strangers here. There are no strangers here.

MR. SILVERMAN: Strangers -- Your Honor, to me they are strangers.

THE COURT: No.

MR. SILVERMAN: We have a new actor on the horizon.

THE COURT: No, really, Mr. Silverman.

MR. SILVERMAN: He started last night.

THE COURT: We've worked and worked and worked and we've tried to do justice and all like that.

MR. SILVERMAN: I think -- I think you ought to give me at least $2,500.00 for each year.

THE COURT: Oh, no, Mr. Silverman.

MR. SILVERMAN: That would cover the escrow --

THE COURT: Mr. Silverman.

MR. SILVERMAN: Just a moment, please.

THE COURT: Now, --

MR. SILVERMAN: Judge, please bear with me. Do me a favor.

THE COURT: All right.

MR. SILVERMAN: Bear with me.

THE COURT: Is it --

MR. SILVERMAN: You can disregard my statement either --

THE COURT: Is it yes or no. Now, this is it.

MR. SILVERMAN: I've got --

THE COURT: If not, we've got --

MR. SILVERMAN: I've got escrow funds over here.

THE COURT: It's either a yes right now and we'll recess and let you --

MR. SILVERMAN: Do what you want, Judge. I --

THE COURT: -- start computations.

MR. SILVERMAN: I give up. Do what you want.

THE COURT: I'll restart -- the answer is yes. Is that it?

MR. SILVERMAN: Do what you want. I have no strength anymore. They --

THE COURT: Your --

MR. SILVERMAN: These fellows exhausted me. I'm --

THE COURT: Well, you've exhausted me, Mr. Silverman. You've almost --

MR. SILVERMAN: I hope not.

THE COURT: -- exhausted my patience.

MR. SILVERMAN: I hope not. I hope not. I don't want to exhaust you.

THE COURT: Now, is it the Court's understanding that if we eliminate the commissions income and we give you $1,500.00 a year off the unexplained deposits adjusted up-to-date for the years '61 to '65 that you will sign up a stipulation for the deficiency?

MR. SILVERMAN: And they give me credit for all the identifiable deposits.

THE COURT: The ones we've identified today.

MR. SILVERMAN: I mean those even after today.

THE COURT: No, no, we're not going to --

MR. SILVERMAN: I've got two checks -- I've got --

THE COURT: I know but we -- well, then, Mr. Silverman --

MR. SILVERMAN: Judge, I've got two --

THE COURT: -- we'll just have to recess and --

MR. SILVERMAN: No, no, just wait a moment.

THE COURT: -- and you gentlemen will just have to keep going. That's all.

MR. SILVERMAN: Judge, just a moment. I have two checks over here.

THE COURT: No. Now, I don't care what you --

MR. SILVERMAN: Three checks that's over $500.00.

THE COURT: I don't care what you have. What do you think the $1,500.00 is for?

MR. SILVERMAN: That's all $500.00 right here.

THE COURT: Mr. Silverman, it's time now to separate the men from the boys and --

MR. SILVERMAN: I know. I know. We've got to do that.

THE COURT: I think we've tried to be very, very fair with you, and we've worked along with you and everybody's been very patient and I haven't seen you called to my attention any instance in which you brought something to the attention of the respondent that the respondent hasn't given you credit for. So the proposition is that as of right now, they have accepted certain amounts. We've talked about how the capital gains will be adjusted. We've talked about -- we'll eliminate these insurance commissions entirely since we're not talking about anything but $1,000.00. In addition to all of that, starting in 1961 we'll give you $1,500.00 a year off the unexplained deposits figure and we'll compute the taxes in accordance with the law either your itemized deduction or standard deduction as the law requires either on a joint basis or a separate basis as the returns were filed. To the resulting liability we add the fraud penalties. Now, are you willing to go ahead on that basis, yes or no?

MR. SILVERMAN: Of course, Judge, I'm -- there is still my right to the motions that I originally made at the opening of the Court about the Statute of Limitations.

THE COURT: Well, the Statute of Limitations doesn't apply in a case of fraud.

MR. SILVERMAN: Your Honor so ruled but I want to preserve my rights.

THE COURT: Well, how can you preserve your right? There's no such thing. You can read the book, can't you?

MR. SILVERMAN: I did.

THE COURT: Well, all right. How can you avoid -- how can you invoke the Statute of Limitations?

MR. SILVERMAN: In 1967, they knew what the deficiency was.

THE COURT: That doesn't make any difference. The Statute says that in the case of fraud the deficiency can be assessed at any time.

MR. SILVERMAN: After knowledge?

THE COURT: Yeah. It could go 30 years --

MR. SILVERMAN: After knowledge?

THE COURT: -- after knowledge. There's no latches there. There's no such thing, Mr. Silverman.

MR. SILVERMAN: How about to 1960, Judge?

THE COURT: It doesn't make any difference. There's fraud there. You admitted it yourself.

MR. SILVERMAN: I didn't. If you think the $16,000.00--

THE COURT: You said you've been a bad boy, didn't you?

MR. SILVERMAN: I never admitted that and I wasn't a bad boy, Judge. You classified me so as though as such but I can't argue with you.

THE COURT: I'd classify you a little harder then that, Mr. Silverman.

MR. SILVERMAN: You are the Judge of this case and I can't argue with you.

THE COURT: There's fraud in these -- all these years. There's no question about that. You didn't report all your fees. You didn't report all your interest. You didn't report you dividends. It wasn't an accident. It isn't something that came about by accident. You went through all these years that way. Isn't that right? That's right.

MR. SILVERMAN: You're creating a reputation, Judge.

THE COURT: Huh?

MR. SILVERMAN: You're creating a reputation for me.

THE COURT: I didn't create any reputation. Everything that happened here you did, Mr. Silverman. Don't -- don't -- is it yes or no?

MR. SILVERMAN: What can I tell you? Do whatever you want.

THE COURT: Well, is it yes? I want it on the record. Do you agree --

MR. SILVERMAN: Do whatever you want. Do what you please.

THE COURT: Do you agree to sign the stipulation on that basis?

MR. SILVERMAN: I don't like to but I can't help myself. I'm forced to.

THE COURT: All right. Then you agree to sign on that basis? Yes or no?

MR. SILVERMAN: I can't -- I'm forced to. I haven't got the strength to fight the whole -- the whole --

THE COURT: Well, we'll --

MR. SILVERMAN: -- Government.

THE COURT: -- come back next week if you want. I'm not saying -- I don't want -- as long as you say you sign under duress or anything?

MR. SILVERMAN: I have no strength anymore to fight this, Judge. I'm exhausted.

THE COURT: All right.

MR. SILVERMAN: I went through an ordeal this week. I don't wish anybody to go through that.

THE COURT: All right. Do you want to sign on that basis?

MR. SILVERMAN: What can I do? I'm against the wall.

THE COURT: Take the towel and --

MR. SILVERMAN: I don't need any towels. I'm very well preserved without a towel.

THE COURT: Well, is it the Court's understanding that we'll recess for the purpose of preparing the computations and we'll come back in then at 10:00 tomorrow morning hopefully and you'll be prepared to sign off. Is that right?

MR. SILVERMAN: It's the only thing I can do.

THE COURT: Okay. That's what we'll do.

THE CLERK: All rise.

(Whereupon at 11:00 A.M. the case was recessed as described above)

AFTERNOON SESSION

2:10 P.M.

THE CLERK: Be seated. The Court is now in session.

MR. KLETNICK: Your Honor, after our session this morning, respondent and Mr. Silverman had further discussions, and respondent's prepared a decision for the year -- for the Docket No. 3506-68, which is the year 1961 -and respondent has executed it. Mr. Silverman has not as yet executed it and I'll turn the floor over to Mr. Silverman.

THE COURT: All right. Mr. Silverman.

MR. SILVERMAN: Your Honor, I believe that we are going to agree--stipulate all --I'd like to have them all at one time. I want to see if I can afford it. Although it looks high to me but that's the figures. I'd like to have all the years before me so I can look them over and see if I can afford them. If I can afford them --

THE COURT: Suppose you can't afford them, Mr. Silverman?

MR. SILVERMAN: Then I'm not going to sign them, Judge.

THE COURT: Huh?

MR. SILVERMAN: I'm not going to sign them.

THE COURT: Well, what difference does it make then--

MR. SILVERMAN: It makes a lot of difference to me.

THE COURT: -- whether you can afford them or not? Well, I think we'll just have to continue the trial Monday morning, Mr. Silverman.

MR. SILVERMAN: It's up to you, Judge.

THE COURT: If you want to go ahead with the --

MR. SILVERMAN: I'm willing to listen to Your Honor. I'm willing to --

THE COURT: The amount of the tax liability is not predicated upon whether it looks big or small or how it looks. It's predicated upon the fact that there are omissions from income and -- and we restore those omissions from income and we compute the liability. Now, if you don't have the money to pay it, that's another department. You enter your decision and make whatever arrangements you may be able to make based upon the resources with the department that is entrusted with the collection of liabilities.

MR. SILVERMAN: I appreciate that.

THE COURT: So as far as the Court's concerned what the result may be is just -- has no relevancy here whatsoever.

MR. SILVERMAN: I want to know what I'm buying -- all package.

THE COURT: [illegible] --

MR. SILVERMAN. And I'm not signing one without --

THE COURT: -- Court has no problem with -- with what you're buying. All the Court is saying is that --

MR. SILVERMAN: I understand.

THE COURT: -- if you're telling me that if the figures come out and look big that we're going to keep the trial going, we may keep the trial going but I'll guarantee you they're going to end up bigger because we've made all kind of concessions to you just for the purpose of getting you to sign and I hope you realize --

MR. SILVERMAN: No, no, Judge. I --

THE COURT: -- that --

MR. SILVERMAN: I think on the trial I can knock out quite a bit more.

THE COURT: Well, then, Mr. Silverman --

MR. SILVERMAN: I think. I think,

THE COURT: -- the only thing to do is I'll see you at 10:30 on Monday morning and let's not even talk about settlement. I'll enter the decision and then -- and all of this junk that you're putting in here, you either have to tie it in in dollars and cents or I'm paying no attention to it and the $1,500.00 and all the rest of it -- that's out. So that's your choice and the parties will--

MR. SILVERMAN: Judge, why can't they give me all the stips at one time?

THE COURT: Well, they'll give it to you as fast as they can reproduce it, and --

MR. SILVERMAN: Well, --

THE COURT: -- I'll be here tomorrow morning and --

MR. SILVERMAN: I'll come here tomorrow morning.

THE COURT: Huh?

MR. SILVERMAN: I knew -- I'm coming tomorrow morning.

THE COURT: All right. I say I'll be here tomorrow morning and if they --

MR. SILVERMAN: Why do you ask to be told that -- we're going to disregard all that stuff?

THE COURT: Well, if they have, you'll work it -- the problem I have, Mr. Silverman, is that you're -- you say--

MR. SILVERMAN: My problem is bigger then yours, Judge.

THE COURT: -- you're concerned about the amount.

MR. SILVERMAN: I am. I certainly am.

THE COURT: Well, suppose we see you at 10:00 tomorrow morning?

MR. SILVERMAN: Tomorrow morning I come and if I'm not ready, I'm not walking out.

THE COURT: All right. We'll see you at 10:00.

THE CLERK: All rise.

THE COURT: [illegible]

MR. SILVERMAN: Thank you, Your Honor.

(Whereupon at 2:21 P.M. the case was recessed as described above)

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: Frank L. Silverman

The foregoing pages, numbers 359 through 409 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Donna Dickert on June 24, 1976 in the United States Tax Court located in New York, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

Donna [illegible]
(Name)

7/23/76
(Date)

UNITED STATES TAX COURT

FRANK L. SILVERMAN
Petitioner
vs
COMMISSIONER OF INTERNAL REVENUE
Respondent

Exhibit J

DOCKET NO. 3506-68

LOCATION OF HEARING: New York, New York

DATE: June 25, 1976

BEFORE: Honorable William H. Quealy

APPEARANCES:

Frank L. Silverman
Pro Se

Theodore J. Kletnick
David Brodsky
Attorneys for Respondent

Frank L. Silverman

vs.

Commissioner of Internal Revenue

June 25, 1976

12:00 P.M.

(Same appearances)

THE CLERK: Be seated. The Court is now in session.

MR. SILVERMAN: Good afternoon, Judge.

THE COURT: Good afternoon, Mr. Silverman.

MR. SILVERMAN: Your Honor, the wife and I have discussed this thing for the past hour and she has advised me and I am of the same opinion that we are going to accept the settlement the way it's constituted and I'd like to make a further motion in this regard for the Court to declare a mistrial in view of what took place yesterday. The --

THE COURT: What mistrial and what took place?

MR. SILVERMAN: In this case.

THE COURT: What do you mean mistrial?

MR. SILVERMAN: I don't think the Court can unbiasedly now determine this case because of the statements in the record and the attitude of the Court with regard to certain items --

THE COURT: Well, I think -- Mr. Silverman, --

MR. SILVERMAN: Yes, sir.

THE COURT: really. What -- if there's ever a case in which both the Court and Government counsel have gone out of their way to facilitate you in the presentation of your case, giving you credit for everything that they could possibly identify and on top of that, the Court added another $7,500.00 in lieu of going through another batch of $200.00 checks. Then took out all of the commission income, not just part of it, all of it, then it's the Court's understanding that the Government that in order to further eliminate any likelihood of having charged you with too much, took out another $5,000.00. If there is any bias there, why I'm afraid that by comparison with most cases I don't know what you feel the roll should be. All the Court was trying to tell you is that just because you have a check that you issue that doesn't raise any presumption that the amount that you are suppose to have received from a client went into this or that bank account. The respondent has given you credit for everything that could be identified. The rules of evidence are such that if you can't identify it, there's no way the Court can give it to you. Now, your motion is, therefore, overruled.

MR. SILVERMAN: I respectfully accept the denial of a --

THE COURT: Now, you -- Mr. -- that's fine. You know --

MR. SILVERMAN: Just let me finish my statement please -- a denial of a mistrial because --

THE COURT: We don't have mistrials in this Court, Mr. Silverman.

MR. SILVERMAN: I can't have a mistrial?

THE COURT: I say we don't have mistrials in this Court.

MR. SILVERMAN: Well, then I'm going to ask this Court in view of the fact that they did not permit me to continue yesterday with a further -- and the agents for the Government to further go into the explanation of --

THE COURT: Well, listen -- now let's get it straight, Mr. Silverman.

MR. SILVERMAN: Yes. Yes, sir.

THE COURT: The only reason that there was any break in these proceedings was basically at your request but in view of your position here, we'll go ahead. Now, there's a case scheduled for Monday but at 9:30 on Tuesday morning, I'll be back and I'll see you and we'll take up where we left off.

MR. SILVERMAN: Your Honor, would you be gracious enough, if you refuse a mistrial, give me a couple of weeks because all my papers --

THE COURT: We gave you six months to get ready.

MR. SILVERMAN: No, no. Since yesterday the papers were disheveled. They were all --

THE COURT: Well, --

MR. SILVERMAN: -- hodgepodged. It'll take me a week.

THE COURT: I'm sorry, Mr. Silverman. We're resuming at 9:30 on Tuesday morning.

MR. SILVERMAN: I can't get a couple days to straighten out my papers, Judge?

THE COURT: You have a couple of days between now --

MR. SILVERMAN: I can't work tomorrow. Tomorrow I have to go to Schul. I don't work Saturday. I never did all my life.

THE COURT: I can't help it, Mr. Silverman. We've given you --

MR. SILVERMAN: Maybe just a week.

THE COURT: -- months to get ready and as a --

MR. SILVERMAN: Judge, --

THE COURT: -- matter of fact, Mr. Silverman, the Court is wholly unconvinced that if you would have brought a lot of this information in to the respondent, we wouldn't have even had to spend the last week -- this week on this case. Now, you say they wouldn't listen and all. It's the Court's understanding that your contact with the respondent during the six months that we allowed you to get ready for the case and gave you the details of the Government's case that your contact with the respondent was minimal.

MR. SILVERMAN: Judge -- Judge.

THE COURT: It makes no difference, Mr. Silverman. We're going to finish this case, and we're going to finish it without anymore recesses, --

MR. SILVERMAN: I need a little bit more time to get my papers in order.

THE COURT: -- and -- you've tried law suits.

MR. SILVERMAN: Judge, I did.

THE COURT: You don't stop in the middle of a law suit. You know that as well as I do.

MR. SILVERMAN: We disheveled through all the papers. We're making hodgepodge.

THE COURT: There's nothing to dishevel. You've got them all here and --

MR. SILVERMAN: Well, when we get them together we missed some bank -- I can't find. They are very important papers --

THE COURT: Well, --

MR. SILVERMAN: -- if I have to continue with this thing here, Judge.

THE COURT: You'll have plenty --

MR. SILVERMAN: Please.

THE COURT: Plenty of time next week --

MR. SILVERMAN: I have but we got yesterday interrupted by getting everything together. I was all right till yesterday. I was in the order and the shape to proceed.

THE COURT: Now, all you've got to do is take back those piles you offered yesterday and you have the Court's permission to remove them.

MR. SILVERMAN: Under the circumstances, I would request for at least ten days --

THE COURT: Well, --

MR. SILVERMAN: -- so I can get my papers.

THE COURT: -- that motion is denied too, Mr. Silverman and --

MR. SILVERMAN: I respectfully accept Your Honor's ruling.

THE COURT: -- it's the opinion of the Court is that the real purpose here is just delay and this case --

MR. SILVERMAN: No, Your Honor, absolutely not.

THE COURT: This case --

MR. SILVERMAN: Not at this point, Judge. Not at this point.

THE COURT: This case has been delayed long enough --

MR. SILVERMAN: Never delayed because of my act. It was delayed because the Government failed or refused to give them both -- particulars to prepare this case for the

Court.

THE COURT: You had those more then six months ago.

MR. SILVERMAN: No, I did not, Judge. Not six months.

THE COURT: They gave them to you.

MR. SILVERMAN: I did not six months.

THE COURT: Anyway, there's no use in us discussing it --

MR. SILVERMAN: No.

THE COURT: -- any further, Mr. Silverman. If you want to try your case --

MR. SILVERMAN: I want to continue it. Yes, sir.

THE COURT: -- we'll be here -- or be here at 9:30 Tuesday morning and if you're -- we'll go on with a recess of a couple of days for the Fourth of July, why if we'll have to go from now till Labor Day, we'll go on in session until we try this case.

MR. SILVERMAN: So I understand my motion for a mistrial in denied?

THE COURT: That is denied too.

MR. SILVERMAN: All I can do is take my exceptions, Judge. I can't do anything else.

THE COURT: You can take your exceptions.

MR. SILVERMAN: I am. I am.

THE COURT: That's your privilege.

MR. SILVERMAN: I am. Thank you very much for the privilege of remembering to take the exception.

THE COURT: That's all right. In view of the fact that having -- as I say, the Court feels actually that the party here who has been somewhat unreasonable is yourself. Everybody here has leaned over backwards, Mr. Silverman, to try and help you get all of your evidence in. No there's no question about that. You come into this Court as an admitted tax evader, see, over a period of five years and we gave you a whole week here to do something that could very well have been done upstairs and would have saved the Court a lot of time and saved everybody a lot of time. If you insist on doing it that way, that's you privilege.

MR. SILVERMAN: I would still like --

THE COURT: But we're not going to keep recessing in order to do it that way. That's your privilege. --

MR. SILVERMAN: I still would like --

THE COURT: -- but we're not going to keep recessing in order to do it that way. We're going to do it that way at the Court's convenience not your convenience.

MR. SILVERMAN: If the respondent wishes me to further continue the checking out of those items, I'll be glad to do so.

THE COURT: Well, we'll start again on Tuesday morning.

MR. KLETNICK: Respondent's willing to stay here day and night till Tuesday working with Mr. Silverman.

THE COURT: Very good.

MR. KLETNICK: We're available at all hours.

THE COURT: All right. So I'll --

MR. SILVERMAN: All right. I'll bring my papers.

THE COURT: I'llsee you at 9:30 and let's understand that we're starting back. There's no $1,500.00 items and no $5,000.00 items and as far as the Court is concerned it is hope that those items won't come up again. In other words, we're not going to let Mr. Silverman tinker around for two more days and then still give him $1,500.00 and $5,000.00. I hope all of you -- if you want to give away the Government, you can give away the Government.

MR. KLETNICK: That's respondent's feeling on that.

THE COURT: Yeah.

MR. SILVERMAN: Judge, could we see you in Chambers together with the attorney for the Government?

THE COURT: I'm sorry, Mr. Silverman.

MR. SILVERMAN: I want to ask a question.

THE COURT: I --

MR. SILVERMAN: Just a moment. It'll take just a minute. Can we see you --

THE COURT: I prefer in view of your talk here about being prejudice

MR. SILVERMAN: No, Judge. I'd rather this be --

THE COURT: -- any further discussions you and I have, Mr. Silverman, are going to be on the record.

MR. SILVERMAN: I wish this would be off the record, --

THE COURT: No, we're going --

MR. SILVERMAN: -- on my request, Judge.

THE COURT: We're going to have to have our discussions --

MR. SILVERMAN: On my request, Your Honor.

THE COURT: I'm very sorry, Mr. Silverman, but --

MR. SILVERMAN: All right. Then we don't discuss.

THE COURT: All right. Thank you.

MR. SILVERMAN: Thank you very much.

THE CLERK: All rise.

THE COURT: I'll see you Tuesday morning at 9:30.

(Whereupon at 12:10 P.M. the case was adjourned as described above)

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: FRANK L. SILVERMAN

The foregoing pages, numbers 410 through 420 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Donna Dickert on June 25, 1976 in the United States Tax Court located in New York, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

(Name)

7/23/76

(Date)

UNITED STATES TAX COURT

FRANK L. SILVERMAN
Petitioner
vs
COMMISSIONER OF INTERNAL REVENUE
Respondent

Exhibit K

DOCKET NO. 3506-68
et al

LOCATION OF HEARING: New York, New York

DATE:
July 7, 1976

BEFORE:
Honorable William H. Quealy

APPEARANCES:

Frank L. Silverman
Pro Se

Theodore J. Kletnick
David Brodsky
Attorneys for Respondent

Frank L. Silverman

vs.

Commissioner of Internal Revenue

July 7, 1976

9:45 A.M.

(Same appearances)

THE CLERK: Be seated.

MR. SILVERMAN: Good morning, Judge.

MR. KLETNICK: Good morning, Your Honor.

THE COURT: Good morning. Good morning. I guess maybe we'll start with the a report on the progress to-date. Mr. Kletnick.

MR. KLETNICK: Okay. On the conclusion of the proceedings on June 25th, a couple Friday's ago, respondent met with petitioner. The purpose was to analyze additional evidence submitted by the petitioner. The results of that were as follows: of the approximately -- or I'd say about $100,000.00 of unexplained deposits. Petitioner offered no explanation at all for $28,000.00. Of the remainder, petitioner's explanations were rejected by respondent except for approximately $2,800.00 of additional eliminations made by respondent. The parties then prepared a Supplemental Stipulation of Facts which are basically concessions by the respondent which concede approximately -- the approximately $2,800.00 of new eliminations.

THE COURT: All right.

MR. KLETNICK: The supplemental stipulations contains all the eliminations previously agreed to prior to the preparation of the unexecuted stipulated decision except, of course, for the $7,500.00 in allowances for '61 to '65 and the $5,000.00 for 1960. So at this time, the parties would like to file the Supplemental Stipulation of Facts, together with Exhibit AR which is attached thereto.

THE COURT: All right. Thank you. Be received and made a part of the record. I take it then that that gets to the -- get us -- get's us to the point where Mr. Silverman is going to produce his evidence with respect to the $72,000.00 now is that right?

MR. KLETNICK: Yeah, I assume so.

THE COURT: All right. Mr. Silverman, we'll hear from you.

MR. SILVERMAN: At this time, Your Honor, after we adjourned this case, I think it was on a Friday, I think it was two weeks ago, respondent, myself and one of the agents went upstairs and we started working on the various items and figures and we also made an appointment for Sunday and we came here Sunday. We spent at this time from about 10:30 to about 5:00 or thereabouts. Mr. Kletnick, Mr. Wallace and myself -- Mr. Wallace being the agent for the Commissioner and due to the discussion and after investigating various items or respondent eliminated certain items, we produced proof to show the respondent those items should have been eliminated. We have our items that they refused to eliminate which will be the subject of this Court's consideration. Now, for the first time, Mr. Kletnick advises me that the closing statements -- the list of cases that I submitted to him, I think it was February when Your Honor directed we get together on this -- the year 1960, a list of all the cases that were settled for which I filed judicial statements. Mr. Kletnick advised me at that time that he would not accept them unless he sees the original judicial statement on file with the --

THE COURT: Well, it's my understanding --

MR. SILVERMAN: -- Judicial Conference.

THE COURT: -- Mr. Silverman, that we have passed the judicial statement stages, isn't that right, Mr. Kletnick?

MR. KLETNICK: Except for the year 1960.

THE COURT: Except for the year 19 --

MR. KLETNICK: We -- and that's just the year that we're talking about.

MR. SILVERMAN: That's the item we're talking about, Judge.

THE COURT: Pardon?

MR. SILVERMAN: That's the year we're talking about.

THE COURT: All right.

MR. SILVERMAN: And I showed Mr. Kletnick there was a discrepancy of $17,000.00 or $18,000.00 that should be eliminated. He said that he'll do so when he sees the Judicial Conference statement. Now, on Monday morning immediately after the conversation we had Sunday, I prepared a subpoena, brought to the Judicial Conference, served them and they got a copy received. I got the stamp of the department on the back of the subpoena. I got a call from Mr. John Ray who is the attorney -- assistant attorney for the Court administration advised me that the 1960 and older statements are made up of two parts. In 1960, they are with the Appellate Division, First Department, they are on microfilm, and after July 1, 1960, they are with the Judicial Conference. There was a re-organization of the Courts at that time and that's why the division was made. And he advised me after he called me sometime -- I think it was in the early part, of morning -- early part of the morning about maybe 12:00, 12:30, that he would not be able to have those papers for me -- at least a month to get the microfilm from the Judicial Conference. Now, since, Mr. --

THE COURT: Well, let me say this, Mr. Silverman. This case has been pending for several years. It was calendared well in advance. We've been up here off and on now for the better part of a month. We've been actually auditing you right in the Courtroom here which is not the normal procedure and that I can assure you that this Court is going to wind this case up today, tomorrow, Saturday or Sunday or sometime right now and --

MR. SILVERMAN: Judge, we talked about $17,000.00 over here.

THE COURT: Well, I can't help it, Mr. Silverman.

MR. SILVERMAN: Judge --

THE COURT: You're here because you admittedly did not report your income. Now, --

MR. SILVERMAN: Judge --

THE COURT: -- let's start right back at the beginning so I would suggest that without any further elaboration you proceed to present the evidence that you have and we'll receive it and go on from there so --

MR. SILVERMAN: Judge, I served them with a copy of those cases in February or March and they made no objection to the our papers.

THE COURT: Well, in what form was the copy?

MR. SILVERMAN: In this form that I've got here.

MR. KLETNICK: Respondent would like to state for the record, we're not going to put a witness on the stand to testify that we rejected the explanations that Mr. Silverman's talking about --

THE COURT: Well, --

MR. KLETNICK: -- at the time -- in February.

THE COURT: -- did you receive copies of statements?

MR. KLETNICK: Mr. Silverman doesn't have copies of statements, that's the problem.

MR. SILVERMAN: I gave you a copy and I'll give the Court a --

MR. KLETNICK: What he has is a self-serving list which he prepared and --

THE COURT: You do not have the actual copies of the statements -- just the list?

MR. KLETNICK: He has --

MR. SILVERMAN: The Judicial Conference -- on file with the department.

THE COURT: Mr. Silverman, you're a lawyer. You've been in this Court a long time. You know that you just can't prepare a schedule and submit it to someone.

MR. SILVERMAN: Judge, they were duty bound to tell me they wouldn't except that with a subpoena in February -- there'd be no problem anymore.

THE COURT: Well, I'm sorry.

MR. SILVERMAN: They didn't do it.

THE COURT: They weren't duty bound to tell you anything.

MR. SILVERMAN: I'm not --

THE COURT: [illegible] you have any evidence to present today because if not, I'm just going to close this record and we're going to go to a decision?

MR. SILVERMAN: I have the list I submitted to the respondent.

THE COURT: All right. Let's submit it.

MR. SILVERMAN: All right. That's what I have and I'm going to submit it to the Court. Have we got a copy of yours, Mr. Kletnick?

MR. KLETNICK: Yes, we'll give you a copy.

MR. SILVERMAN: I don't know where I put them. Just a little while ago, I had them in here. Yes, I have submitted the list to the respondent.

THE COURT: Well, let's mark it with an exhibit number.

MR. SILVERMAN: I'm going to try to find mine and I'll substitute it if the Court will accept it. I got it someplace here.

MR. KLETNICK: Your Honor, for the record, the respondent would like to object to this. It's hearsay.

THE COURT: Well, just wait until it's offered, huh? I thought I taught you how to try a case. I've had you here many times.

THE CLERK: Petitioner's Exhibit 83 marked for identification.

***

THE COURT: All right. Now, tell us what that is, Mr. Silverman.

MR. SILVERMAN: This is --

THE COURT: You're under oath by the way. All right. What is this?

MR. SILVERMAN: This is a list of cases that were settled in the year 1960. I got those lists -- I had it at one time but I had to use the conference statement.

THE COURT: Now, where did you get these figures from?

MR. SILVERMAN: From Judicial Conference Statement, Judge.

THE COURT: Well, how could you have gotten it from the Judicial Conference Statement if you don't have the statement?

MR. SILVERMAN: I had them -- I had them -- I don't know where I misplaced them so I got so many papers here.

THE COURT: When did you --

MR. SILVERMAN: I've got a ton of papers.

THE COURT: When did you prepare this list?

MR. SILVERMAN: This was prepared somewhere in February or March, Judge. It wasn't prepared --

THE COURT: Well, if you had the statement then, you must have them now, don't you?

MR. SILVERMAN: I've looked all over. I'm going bananas. I can't find them, Judge. I want to help the Court.

THE COURT: Is it your testimony that you prepared this from the actual Judicial Conference Statement?

MR. SILVERMAN: Yes, it's my testimony and I'll swear under oath.

THE COURT: Now, what were they -- the originals or your retained copies or --

MR. SILVERMAN: They were copies I received from the Judicial Conference Statement that were filed with the Judicial Conference.

THE COURT: Well, when did you receive them?

MR. SILVERMAN: Oh, I received them, I believe it was before -- after I received my notice --the deficiency notice -- thereafter sometime in the '60's -- the late '60's.

THE COURT: And you prepared this list at that time?

MR. SILVERMAN: I prepared it -- approximately that time, yes, Judge.

THE COURT: Well, why haven't you -- and you submitted it to the respondent in February, is that right?

MR. SILVERMAN: I did, Your Honor. When Your Honor directed this case be set for trial, and get ready -- so I submitted this one in 1961 as well.

THE COURT: And you're offering it at this time as Petitioner's Exhibit 33?

MR. SILVERMAN: Yes, Your Honor, I do, and on that paper will show $17,000.00 that they didn't give me credit for.

THE COURT: All right. Mr. Kletnick, what do you have to say?

MR. KLETNICK: Respondent objects. It's hearsay and it's not the best evidence.

THE COURT: Well, under the new rules isn't it right that this goes in subject to your right to verify it? This purports to be a summary of the --

MR. KLETNICK: Well, he doesn't have these documents with him.

THE COURT: I know but he doesn't have to have them in Court. Read the new Rules of Evidence, isn't that --isn't that what they say? Get me the rule and read it if you have any --

MR. KLETNICK: I think the rule says that you have to have -- make the documents or the underlying basis for the summary available to the other party.

THE COURT: Well, he's making them available to you. He's getting -- you've got the Judicial Conference -- getting them together for him.

MR. KLETNICK: We haven't seen them yet, that's the problem.

THE COURT: I know.

MR. KLETNICK: Mr. Silverman has some of them.

THE COURT: You should have asked for them in February, shouldn't you?

MR. KLETNICK: We rejected that in February.

THE COURT: Well, why didn't -- why? Why didn't you ask for the statements in February?

MR. KLETNICK: We asked for the statements from Mr. Silverman.

MR. SILVERMAN: They never did, Your Honor.

MR. KLETNICK: I can put a witness on.

THE COURT: No, I think Mr. Kletnick, until you gentlemen rolled up your sleeves here in the last couple of months, you weren't inclined to listen very much either but as I understand the new rules and I'll be glad to put them to a test -- this is admissible, subject to your right to verify it and bring to the attention of the Court if it is not what it purports to be. Now, that's the way the rule reads. You don't have to bring it into Court anymore, and Mr. Silverman says that he's prepared to make it available to you and he had copies at one time that he was going to make available. So subject to your verification, the Court will receive Exhibit 83. Now, what else do you have, Mr. Silverman?

MR. SILVERMAN: I also have the item of -- when we started out with this case, I made several motions.

THE COURT: Now, let's don't go back to the motions.

MR. SILVERMAN: You don't have to go back to the motio
We'll proceed from the motions on.

THE COURT: I have a feeling, Mr. Silverman, that --

MR. SILVERMAN: Yes, sir.

THE COURT: -- you're stalling and --

MR. SILVERMAN: No, no, Judge, please --

THE COURT: If I were in the position of the respondent after some of the statements you made in Court --at recesses that they weren't going to collect any money, I'd put an end to this stalling by just levying a jeopardy for the amount we've got -- we know you owe --

MR. SILVERMAN: No, that was just --

THE COURT: -- and that would put an end to all of this stalling. You'd be very anxious then --

MR. SILVERMAN: Judge, that was just --

THE COURT: -- to get this matter disposed of.

MR. SILVERMAN: That was just talk.

THE COURT: Well, I don't care whether it's talk or not. In my opinion, --

MR. SILVERMAN: That's the reason.

THE COURT: -- the collector is delinquent in not jeopardying after such talk.

MR. SILVERMAN: That's the reason that I'm opposing every inch of the way the respondent.

THE COURT: I see. Okay.

MR. SILVERMAN: Otherwise I wouldn't oppose it.

THE COURT: Well, you admit making such statements?

MR. SILVERMAN: Okay, Judge. Now, what I want to point out to the Court that when I made a motion and -- for a Bill of Particulars in D.C. --

THE COURT: Yeah, we gave you everything.

MR. SILVERMAN: -- I came before Judge Brennan and Brennan directed the respondent to serve whatever papers they had available and they postponed that motion for a future date and in the meantime, I got some papers. Among those papers, I got an item like 222 exhibit it appears--I'd lik to submit that paper to the Court's attention and consideration in contrast to Exhibit 21-U of the respondent who submitted in the beginning of the case.

THE COURT: Well, what's that -- for what purpose is that being --

MR. SILVERMAN: The purpose -- that purpose --

THE COURT: I mean if you're saying that -- that demonstrates that we've made progress to-date, if I didn't think we'd made progress to-date, Mr. Silverman -- well, my patience has been put to the test. I would have cut you off a long time ago and I only --

MR. SILVERMAN: Judge, --

THE COURT: I only came back up here at considerable discomfort and late plan and a traffic accident on the parkway and a few other harassments that us non-New Yorker's are not customed to but -- see so --

MR. SILVERMAN: Judge, I want to submit a copy of the statement into evidence to show the --

THE COURT: It will be received for whatever it's worth.

MR. SILVERMAN: To show the discrepancy -- oh --

THE COURT: We're not -- we're not interested in discrepancies, we're getting down to the bottom line here, Mr. Silverman.

MR. SILVERMAN: Yes, -- well, Your Honor, I'd like to explain this way to the Court.

THE COURT: Now, you've got $72,000.00 ot $78,000.00 of unaccounted for deposits here and I gather spread over these years that you're going to account for this morning. Now, --

MR. SILVERMAN: No, I'm not prepared to account for it because I didn't have enough time, Judge.

THE COURT: Well, then --

MR. SILVERMAN: I didn't feel good for three days. This --

THE COURT: Well, I -- I --

MR. SILVERMAN: This case exhausted me.

THE COURT: When I woke up this morning, I didn't feel very good --

MR. SILVERMAN: Well, I know I couldn't --

THE COURT: -- when I knew what I had ahead of me either, Mr. Silverman;

MR. SILVERMAN: -- anymore searching. I will offer Schedule 22-E submitted to me by the respondent.

THE COURT: In other words, thatwas what the respondent determined as of that time, is that what you're testimony --

MR. SILVERMAN: That was the papers that they gave me that dealt with this case, Judge, at that time or any other time. That -- and the condition is bound by these papers. It's their case --

THE COURT: The -- well, I'm sorry, Mr. Silverman.

MR. SILVERMAN: It's their figures.

THE COURT: For that purpose then, if respondent wants to object why the Court would have to sustain the objection.

MR. KLETNICK: Respondent objects.

THE COURT: It's irrelevant and immaterial and not be received. Now, let's get -- get -- do you want anymore evidence you want to put in --

MR. SILVERMAN: I want to offer the schedule here, Judge.

THE COURT: Well, all right. Respondent objects and the Court sustains the objection. Why --

MR. SILVERMAN: I offer it for identification please.

THE COURT: Petitioner's Exhibit 84 for identification. Now, what else do you have?

MR. SILVERMAN: I have --

THE COURT: You better take up these item by item. I'm telling you -- unless you're prepared to do that, I just made a trip up here that isn't going to save you any money at all.

MR. SILVERMAN: Judge, I appreciate your consideration and your patience in this case but please, have a little bit more patience. I'm not a young fellow. I'm close to 70, and it's very difficult for me to work all alone where the respondent has a host of people. They have five, six and seven people working on this. They "work-off" five or six at all times of the proceedings. That's all right but give me an opportunity --

THE COURT: Well, I'll tell you. We're dealing with the year 1960 and here it is 1976 so you've been able to put off the tax for 16 years. I'd say you've been doing pretty well, Mr. Silverman.

MR. SILVERMAN: Judge, if I put it off, it would cost me

THE COURT: Mr. Surrey, the voters -- Assistant Secretary of the Treasury said, a deferment for 20 years is the same as complete forgiveness so you're coming pretty close to that right now.

MR. SILVERMAN: It's a very easy thing to laugh at. You have respondent laughing --

THE COURT: Well, I'll tell you --

MR. SILVERMAN: -- while they're putting their hands in my pockets.

THE COURT: Well, I --

MR. SILVERMAN: I mean this sort of thing -- it's a serious things. It's not a --

THE COURT: Well, I happen to think it's pretty serious for a person to --

MR. SILVERMAN: I think so too.

THE COURT: -- deliberately evade taxes.

MR. SILVERMAN: I didn't evade taxes, Judge.

THE COURT: Well, --

MR. SILVERMAN: I didn't evade it. They never told me how much I owed them from the beginning on -- the moment those two fellows came to my office --

THE COURT: Well, --

MR. SILVERMAN: -- to talk to me about it.

THE COURT: They never gave me a bill. They never made a statement to me -- how much was due. All they did was just prosecute and persecute and that's what they're doing now. I want an opportunity to be able to explain to Your Honor -- may $15,000.00/$20,000.00 additional. At least $20,000.00 more to explain and I haven't had a chance to do so because time was so short, so close. I can't kill myself with this. Your Honor wants me to get a heart attack in this case? I don't think Your Honor wants to do that, I'm sure. Your Honor is aware of the fact of the strain and stress I'm going through with this. I brought -- every time I came to Court, I brought five or eight or nine big folders of cases in a big cart.

THE COURT: Well, I'll tell you in the interest and recognition of that, Mr. Silverman, we -- we offered you another twelve or $13,000.00, and I don't guess you've gotten back to that high water mark yet so -- I mean, I can't help it. We've tried in every way to dispose of this thing expeditiously, but --

MR. SILVERMAN: Judge, I'd like to have --

THE COURT: It's not -- the Court isn't here to audit taxpayers, Mr. Silverman. This is -- this is really -- we've gone way beyond any judicial proceeding. Now, until we wind this case up, it's going to be a law suit. We're done to the nitty gritty now and if you've got evidence to submit, I'd say -- any items that the Government has not given you credit for, I'm asking you to do so. If not, we'll close the record and that's the end.

MR. SILVERMAN: Judge, I want to point out to this Court, inspite of the impression that the Court gathers from all these items of explanation yet I am at a loss to see in Schedule 3506 -- 1968 where the respondent lists a number of cases that were settled in '61 they list the income for the year like $13,301.60. They don't list the list of payments made to clients which would be at least $13,301.60 for -- that's how they arrive at unexplained deposit, Judge, -- like stockbrokers.

THE COURT: Well, can you show those payments?

MR. SILVERMAN: I can show those payments. I have the checks -- with the Judicial Conference Statement attached. Of course, I can show the payment. Your Honor, knows very well that if I didn't pay those people, I wouldn't be a lawyer too long. Your Honor knows that. Before Your Honor --

THE COURT: Well, now let's just say -- if you're saying -- now, what year are you talking about now?

MR. SILVERMAN: We're talking '61. That's all -- the year '61.

THE COURT: 1961?

MR. SILVERMAN: That's documented by the respondent.

THE COURT: If you contend that -- that it's been included in your gross fees, is that it?

MR. SILVERMAN: They showed me they were fees that I received for the year. They --

THE COURT: In other words, they have the amount of fees stated correctly, is that correct?

MR. SILVERMAN: I'm not -- at this point, I'm not arguing with them.

THE COURT: But you're saying that in addition to those fees, you received the full amount of the --

MR. SILVERMAN: Settlement.

THE COURT: -- settlement. You put that in your bank account --

MR. SILVERMAN: The whole thing. The whole check.

THE COURT: -- and then you issued a check to the--

MR. SILVERMAN: To the client for the share.

THE COURT: For the client. Well, --

MR. SILVERMAN: That's right.

THE COURT: -- do you have the check to the client?

MR. SILVERMAN: I have the checks to the client.

THE COURT: Well, let's see them.

MR. SILVERMAN: Sure I have. I have them.

MR. KLETNICK: Your Honor, this point is kind of moot. I had thought that we had -- in the course of the last several weeks -- I had thought that we had explained it satisfactorily to Mr. Silverman so that he'd understand that we had eliminated virtually the gross receipts from virtually every judicial closing statement transaction and for the year he's talking about, which is 1961, respondent eliminated gross closing statement receipts of $21,931.00.

THE COURT: I see. Well, it's just up to Mr. Silverman to show that that -- that there's more then that, that's all. I assume that the figures will show that, Mr. Kletnick, is that right?

MR. KLETNICK: It's shown on the schedules, isn't that right? It was only one or two items.

MR. SILVERMAN: Schedule 20-T.

THE COURT: Mr. Silverman, instead of telling us about all of this, why don't you just give us the -- just put it in the record. If it's in the record, you can just argue that from --

MR. SILVERMAN: I'll have to bring --

THE COURT: -- what's in the record?

MR. SILVERMAN: I'll have to bring all the files again. I'll have to drag them back --

THE COURT: I thought we had everything in here that has any relevancy here. We've got the closing statements summarized and the gross and the net and all for that year. I don't --

MR. SILVERMAN: If Your Honor --

THE COURT: -- think that's in dispute, is it,

Mr. Kletnick?

MR. SILVERMAN: If Your Honor will look at the closing statement, it will show the Court that the total amount of the receipt of the settlement and my fee -- the other difference went to the plaintiff.

THE COURT: All right. Now, Mr. Kletnick says that that's been eliminated from the unexplained deposits! The amount that went to the client.

MR. SILVERMAN: Well, let him show me -- let him show me in Exhibit 20-D where it was --

MR. KLETNICK: It's Exhibit 24-X.

MR. SILVERMAN: Let me see Exhibit 24-X please.

THE COURT: But if that's -- if that isn't true, this is a matter of argument now. Let's get down -- do you have any more evidence to put in, Mr. Silverman?

MR. SILVERMAN: I wanted a chance to explain some more unexplained deposits. I have those checks and I have those slips. I can't do it today, Judge. I need some more time. I cannot --

THE COURT: We're not -- we're not having anymore time, Mr. Silverman.

MR. SILVERMAN: I need more time. Otherwise, I'll collapse. It's a question of collapsing or -- the Court does whatever it pleases. There's nothing I can do. I can't take it. It's been an ordeal that I went through. I don't wish it on anybody especially in my condition of my health. I have a cardiac insufficiency on top of all that.

THE COURT: Well, --

MR. SILVERMAN: It's documented -- the Court -- this Court knows about it and I can't put myself through too much stress. If I do, I wouldn't last this case over. I ask for the Court's indulgence. The Court was patient until now. I appreciate it. I'm very thankful to the Court for its consideration. I want at least another week or ten days to be able to come in, with all of the figures, that's it. There's not going to be anymore excuses. The Court can take full record over my evidence that I'm going to submit or reject whatever I bring in and then the Court can make judicial determination and I'll be happy -- I'll be --I'll know it was a Court of justice. Whatever the consequences will be, there's nothing I can do about.

THE COURT: Now, we can't keep trying this case --

MR. SILVERMAN: You'll have -- Judge, you'll have to do it. It's a good -- it's a good --

THE COURT: -- settlement -- Mr. Silverman. I'm sorry, Mr. Silverman.

MR. SILVERMAN: I --

THE COURT: I came up here on the assumption that--

MR. SILVERMAN: I can't talk anymore. I'm kind of dizzy, Judge.

THE COURT: you were going to proceed with the trial of this case and --

MR. SILVERMAN: I can't take any longer. I'm kind of dizzy now. Can I have some water, please?

THE COURT: Well, I'll tell you, Mr. Silverman, that as of now, you are not prepared to proceed any further, is that right?

MR. SILVERMAN: I need more time, Judge. I'm --

THE COURT: All right.

MR. SILVERMAN: -- sick. I should go to the hospital now, but I'm trying to hold myself. If Your Honor wants to have me examined by a doctor, I'll submit glady and I'll pay the bill. I'm sick. I'm mortally sick. I need a little time. I'm not going to collapse here. Your Honor doesn't want to see me collapse.

THE COURT: I -- I'm afraid, Mr. Silverman, that we've gone up and down the hill on this so often that --

MR. SILVERMAN: No, no, I'd like to have an opportunity to present my facts to the Court --

THE COURT: Well, --

MR. SILVERMAN: -- in lieu -- another week or so or ten days wouldn't do much difference either way.

THE COURT: The -- the respondent has a --I assume that the respondent wants to check the originals of these, is that right?

MR. KLETNICK: That's right, Your Honor, and I'd like to point out that as I understand that most of those are Mr. Silverman's alleged Judicial Conference client transactions but there are other items in there such as the dividends at the bottom, the --

THE COURT: The exchange checks, miscellaneous funds --

MR. KLETNICK: -- bank loans.

THE COURT: -- how do these -- they have nothing to do with your judicial statements, do they, Mr. Silverman?

MR. SILVERMAN: Yeah, at least $15,000.00 there, Judge. At least --

THE COURT: Yeah but I say these other items on here --

MR. SILVERMAN: No, no, -- nothing --

THE COURT: -- doesn't have anything -- nothing to do with them. Right?

MR. SILVERMAN: Absolutely, Judge.

THE COURT: It's just the first -- the top list up there that has anything to do.

MR. SILVERMAN: Yeah, the top left --

THE COURT: $17,294.54 so we'll X out this other. It has nothing to do with this.

MR. SILVERMAN: Yeah, that's true, Judge.

THE COURT: And six twenty-one and five thousand one seventy net. That's the way it's shown here.

MR. SILVERMAN. Yeah. That's true.

THE COURT: What's the respondent's net figure out of this in '60? What do you have down for it?

MR. KLETNICK: You mean --

THE COURT: For the --

MR. KLETNICK: -- the unexplained deposits/

THE COURT: No, for the gross receipts from these cases settled? Do we have any figure on that?

MR. KLETNICK: For 1960, --

THE COURT: Yeah, that's the year.

MR. KLETNICK: -- respondent didn't make any eliminations for professional fees or --

THE COURT: I see. Well, what's the amount?

MR. KLETNICK: Now, the amount as we computed it, the professional fees that are judicial closing transactions that Mr. Silverman contends total $9,478,75 and then there are a couple of other cases which Mr. Silverman has told us are non-closing statement transactions and they amount to $3,000.00.

THE COURT: So that's about what you have here, Mr. Silverman. I'm not sure that they haven't given you everything you got on that -- Exhibit 83.

MR. SILVERMAN: They didn't eliminate those cases, Judge.

THE COURT: Well, it looks-- it appears to the Court that they did.

MR. KLETNICK: Well, Your Honor, --

MR. SILVERMAN: They did not.

MR. KLETNICK: -- we didn't give them anything for 1960 on the closing statement transactions because we've never --

MR. SILVERMAN: They --

MR. KLETNICK: -- had them.

THE COURT: In other words, you took --

MR. KLETNICK: And the figures I've read are what's in dispute. It's just a summary of what's on here and what Mr. Silverman's told us.

THE COURT: Well, what about the -- in other words, it would seem to the Court that if you're going to take the gross receipts in, you've got to take out something for the disbursements.

MR. KLETNICK: We don't -- we don't know that we took the gross receipts in either because we did not pick up any income.

THE COURT: Well, in other words though if -- if the closing statements so show then you're prepared to make that adjustment, is that right?

MR. KLETNICK: In conjunction with an itemized -- you know, we can see that the money was deposited -- that it relates to bank deposit in an account that we know about.

THE COURT: I mean, I -- Well, he had to pay out the money somehow, didn't he? He had --

MR. SILVERMAN: It was --

THE COURT: He --

MR. SILVERMAN: -- received --

THE COURT: He couldn't draw a check without it being deposited somewhere.

MR. KLETNICK: Your Honor, so far I've only seen three or four closing statements for the whole year 1960.

THE COURT: Well, all right. Now, Mr. Silverman says that he's going to get us all the closing statements for 1960..

MR. SILVERMAN: I'll make a statement to this Court, Judge, I'm going to go up to the Judicial Conference --

THE COURT: Now, in the event he does that, is the respondent prepared to make the adjustment for the amounts received and the amounts paid out pursuant to the closing statements?

MR. KLETNICK: To the extent that the deposits can be identified.

THE COURT: I don't think -- I'm not -- that isn't satisfactory, Mr. Kletnick, because the problem basically in this case is that you're going at it from two or three angles and if -- it would have been my approach to this case to settle it a long time ago by just taking the total figures and netting one against the other but I think if you're going to charge a man with not reporting all his income on specific items, you've got to turn around and treat those as deposits -- totals that he's accounted for, see?

MR. KLEINICK: Yeah, I agree there.

THE COURT: So that really we've got kind of a bastardized process here that we followed so I would be prepared, if he those closing statements, to give him an approrpriate credit for -- for '60. Now, that takes care of 1960, Mr. Silverman. What else do you have here?

MR. SILVERMAN: For '61, I didn't have -- Judge, do you mind if I sit and talk?

THE COURT: You can -- certainly, you can sit. Now, it's my understanding that we've discussed '61 and they've been up and down that hill and they gave you credit in '61.

MR. SILVERMAN: There are certain escrow funds of '61 that --

THE COURT: Now, let's identify those escrow funds. What escrow funds are you talking about?

MR. SILVERMAN: I'll have to go through my papers, and I --

THE COURT: We're down to the end of the road here, Mr. Silverman. I -- for the amount of time that we're spending here, the results just aren't compatible. Now, when you don't have records and when you file false returns and you have to go back 15 years, we're not going to come out exactly but we have made -- maybe the latitude is in your favor, so I think before you get --

MR. SILVERMAN: Judge, the unexplained deposits --

THE COURT: You don't know. Let's face it.

MR. SILVERMAN: Judge, please bear with me a moment. The unexplained deposits -- nowhere's in the world reflect my income because I never made so much money. If I made that kind of money, I wouldn't take $8,600.00 job with the State of New York. In 1960, I took a $8,600.00 job as a Referee with the Workmen's Compensation Board. If I was to make $30,000.00, $40,000.00 or $50,000.0 as the respondent documented to this Court, would I take such a job? Does it make sense? I was a practicing lawyer and I was able to make a living for my family. I paid $32.00 rent a month. I had three kids. My kids were working. They contributed to the house. Every dollar I made, I saved. I lived like an animal.

THE COURT: That --

MR. SILVERMAN: They did not go to put their hands in my pockets -- take every dollar I have away from me. I want to prove to this Court that their figures are fictitious, the figures are make believe, they don't bear all the true facts.

THE COURT: Well, --

MR. SILVERMAN: For this reason, I'm asking for a little bit more time.

THE COURT: We've given you all the time to do that that the Court proposes to do, Mr. Silverman. I'm sorry.

MR. SILVERMAN: The Court was very gracious to me. I'm not finding fault with the Court. Until this time, I wanted to --

THE COURT: We're up here today on the assumption tha we would proceed and receive whatever additional evidence you had that you felt that the respondent had refused to consider. Now, you've got Exhibit 83 in here and you'll be offered an opportunity to produce the unlying closing statements. Now that -- now what's -- do you have any other items that you wish to submit at this time?

MR. SILVERMAN: I'd like to submit for the year '61, '62, '63 and '64 a list of cases, a list of income and disbursements of people --

THE COURT: Well, let's see where -- have you got it here?

MR. SILVERMAN: I'm trying to find it. I'm a little -- I'm a little perturbed with the fact that I can't find papers --

THE COURT: Well, we'll recess here for about 15 minutes and give you an opportunity to get together all of the material that you want to put in the record.

MR. SILVERMAN: Yes. I appreciate that too. Thank you.

THE CLERK: All rise please.

(RECESS)

THE CLERK: Be seated.

THE COURT: Mr. Silverman --

MR. SILVERMAN: Yes, Your Honor.

THE COURT: -- do you have a report to make?

MR. SILVERMAN: Yes. I'm reporting that I have to accept the suggested figure --

THE COURT: All right. The Court will --

MR. SILVERMAN: -- because I feel if I continue on, I wouldn't last the length of this trial.

THE COURT: We'll recess, and how long will it take you to prepare the computations?

MR. KLETNICK: Two o'clock.

THE COURT: Come back at two o'clock for the computations then. Thank you gentlemen.

THE CLERK: Rise please.

(Whereupon at 11:51 A.M. the case was recessed as described above)

AFTERNOON SESSION

2:05 P.M.

THE CLERK: Be seated.

THE COURT: Well, I'll tell you this is a big day, Mr. Silverman.

MR. SILVERMAN: Yes.

THE COURT: It's the day that we'll all remember. It's the day --

MR. SILVERMAN: That you're able to do what you did, Judge.

THE COURT: And I think we've gotten you a very, very fair settlement and the Court feels very gratified that you've decided to accept it. So if you'll sign the settlement papers and we'll go ahead and in due course enter our decision in accordance therewith.

MR. SILVERMAN: Let's have it.

THE COURT: And I know you'll feel a lot better tonight as a result.

MR. SILVERMAN: I'll use my own. I don't want to use your pen. Your pen is contaminated, -- for "twenty hundred dollars" worth.

THE COURT: Well, now wait a minute. I would say this and I'll put it on the record that I think Mr. -- Mr. --

MR. SILVERMAN: Kletnick.

UNITED STATES TAX COURT

Certificate of Transcriber

Docket No. 3506-68 Name: Frank L. Silverman

The foregoing pages, numbers 421 through 45 inclusive, are the true, accurate and complete transcript prepared from the verbal recording made by electronic recording by Donna Dickert on July 7, 1976 in the United States Tax Court located in New York, New York, in accordance with the applicable provisions of the current reporting contract of the Court under which I have performed my duties as transcriber.

Donna [illegible]
(Name)

7/26/76
(Date)

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FRANK L.SILVERMAN,ET AL.,

Petititioners-Appellants,

v.

COMMISSIONER OF INTERNAL REMENUE,

Respondent-Appellee.

Docket No.76-4195

STATE OF NEW YORK)
COUNTY OF NEW YORK)SS.:

FRANK L.SILVERMAN, being duly sworn,deposes and says:

That I am over theage of twenty-one years that I reside in the City of New York,

That on the 1st day of October,1976, deponent mailed a copy of the Joint Index in the above matter to the Department of Justice,Washington, D.C.,20530, to Gilbert E.Andrews,Esq, the address designated by by the said attprney for the above purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office official depository under the exclsuive care and custody of the United States Postal Service at 90 Church Street,New York,N.Y.

Sworn to before me this
1st day of October,1976.

Marcus N Silverman

MARCUS N. SILVERMAN
Notary Public, State of New York
No. 24-9003050
Qualified in Kings County
Commission Expires March 30, 1978

Frank L. Silverman
FRANK L.SILVERMAN

OF NEW YORK, COUNTY OF ss.:

ndersigned, an attorney admitted to practice in the courts of New York State,

Certification By Attorney certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.

Attorney's Affirmation shows: deponent is
the attorney(s) of record for
in the within action; deponent has read the foregoing
and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

dersigned affirms that the foregoing statements are true, under the penalties of perjury.

....
The name signed must be printed beneath

OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is

Individual Verification the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

Corporate Verification the of
a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because
is a corporation and deponent is an officer thereof.

ounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

to before me on 19

....
The name signed must be printed beneath

OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action,

18 years of age and resides at

Affidavit of Service By Mail On 19 deponent served the within
upon
attorney(s) for in this action, at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit of Personal Service On 19 at
deponent served the within upon
the
herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

to before me on 19

....
The name signed must be printed beneath

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a

duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Index No. 76-4195 Year 19

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FRANK L.SILVERMAN,ET AL.,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

AFFIDAVIT OF MAILING JOINT APPENDIX

FRANK L.SILVERMAN PRO SE
and
Attorney for ANNA SILVERMAN

Office and Post Office Address, Telephone

258 Broadway
New York,N.Y.10007
(212) 267-2760

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,